Non-Mandates Cases Cited

California State Restaurant Assn. v. Whitlow
(1976) 58 Cal.App.3d 340

Estate of Griswold
(2001) 25 Cal.4th 904

Henderson v. Mann Theatres Corp.
(1976) 65 Cal.App.3d 397

In re Howard N.
(2005) 35 Cal.4th 117

People v. Superior Court (Vernal D.)
(1983) 142 Cal.App.3d 29

Western Sec. Bank, N.A. v. Superior Court
(1997) 15 Cal.4th 232

Whitcomb Hotel v. California Employment Commission
(1944) 24 Cal.2d 753

CALIFORNIA STATE RESTAURANT ASSOCIATION, Plaintiff and Respondent,
v.
EVELYN E. WHITLOW, as Chief, etc., Defendant and Appellant
Civ. No. 38010.

Court of Appeal, First District, Division 4, California.

May 17, 1976.

SUMMARY

The trial court ordered issuance of a writ of mandate restraining the Chief of the Division of Industrial Welfare, State Department of Industrial Relations, from enforcing a policy of prohibiting an employer from taking a credit against the minimum wage of a restaurant employee for the dollar value of meals furnished, without the specific written consent of the employee. The court held that a minimum wage order promulgated by the Industrial Welfare Commission, then in effect, authorized employers in the restaurant industry to take a credit for meals furnished or reasonably made available to employees without such consent, that the announced policy would constitute an amendment to the order, and that it was therefore beyond the scope of defendant's authority. (Superior Court of the City and County of San Francisco, No. 680041, Ira A. Brown, Jr., Judge.)

The Court of Appeal reversed with directions to the trial court to deny the writ. While the court agreed with the trial court that the wage order permitted an employer to take credit for meals against the minimum wage without the employee's consent, it further held that the order was void as in conflict with the provision of Lab. Code § 450, that no employer shall compel or coerce any employee to patronize his employer, or any other person, in the purchase of anything of value. The court held there was no perceptible practical difference between an "in kind" payment of wages and a "compelled purchase." (Opinion by Caldecott, P. J., with Rattigan and Christian, JJ., concurring.) ***341**

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 35--Administrative Actions--Construction and Interpretation of Rules and Regulations.
Generally, the same rules of construction and interpretation which apply to statutes govern the interpretation of rules and regulations of administrative agencies.

(2) Administrative Law § 35--Administrative Actions--Construction and Interpretation of Rules and Regulations.
In construing a statute or an administrative regulation, a court should ascertain the intent of the promulgating body so as to effectuate the intended purpose of the statute or regulation.

(3a, 3b) Labor § 10--Minimum Wage Orders.
A provision of a minimum wage order promulgated by the Industrial Welfare Commission permitting restaurant employers to take a credit for the value of meals furnished employees against the minimum wage otherwise payable, was correctly construed by the trial court as allowing the employer to take the credit without the consent of the employee, where every wage order relating to the restaurant industry during a period of over 20 years had referred to meals furnished by the employer as a part of the minimum wage, and no policy statements during that period made any reference to any requirement of employee consent, where during that period, and for many years prior thereto, it had been the open and recognized practice of restaurant employers to take a meal credit against the minimum wage without employee consent, and where the commission had considered and rejected a proposal that the wage order in question expressly require employee consent.

(4) Statutes § 44--Contemporaneous Administrative Construction.
Contemporaneous administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is clearly erroneous or unauthorized.

(5) Statutes § 44--Contemporaneous Administrative Construction--Reenactment of Statute With Established Administrative Construction.
Reenactment of a provision which has a meaning ***342** well-established by administrative construction is persuasive evidence that the intent of the enacting authority was to continue the same construction previously applied.

(6a, 6b) Labor § 10--Minimum Wage Orders--In

Kind Payment of Wages as Compelled Purchase.
A provision of a minimum wage order promulgated by the Industrial Welfare Commission permitting restaurant employers to take a credit for the value of meals furnished employees against the minimum wage otherwise payable, construed as permitting the employer to take the credit without the consent of the employee, violates Lab. Code, § 450, which prohibits compelling or coercing an employee "to patronize his employer, or any other person, in the purchase of anything of value." There is no perceptible practical difference between an "in kind" payment of wages and a "compelled purchase," and any implied power the commission might have under Lab. Code, § § 1182, 1184, to authorize in kind payments must be limited, in harmony with § 450, to situations in which such manner of payment is authorized by specific and prior voluntary employee consent.

[See **Cal.Jur.2d,** Labor, § 24; **Am.Jur.2d,** Labor and Labor Relations, § 1789.]

(7) Administrative Law § 30--Administrative Actions--Effect and Validity of Rules and Regulations--Necessity for Compliance With Enabling Statute.
Administrative bodies and officers have only such powers as have expressly or impliedly been conferred on them by the Constitution or by statute. In the absence of valid statutory or constitutional authority, an administrative agency may not, under the guise of regulation, substitute its judgment for that of the Legislature, and administrative regulations in conflict with applicable statutes are null and void.

(8) Statutes § 28--Construction--Ordinary Language.
In order that legislative intent be given effect, a statute should be construed with due regard for the ordinary meaning of the language used and in harmony with the whole system of law of which it is a part.

(9) Statutes § 27--Construction--Liberality--Remedial Statutes.
A remedial statute must be liberally construed so as to effectuate its object and purpose, and to suppress the mischief at which it is directed. ***343**

COUNSEL

Evelle J. Younger, Attorney General, and Gordon Zane, Deputy Attorney General, for Defendant and Appellant.

Hawkins, Cooper, Pecherer & Ludvigson, Daryl R. Hawkins, M. Armon Cooper and Nathan Lane III for Plaintiff and Respondent.

CALDECOTT, P. J.

The issue presented on this appeal is whether Labor Code section 450 prohibits an employer in the restaurant industry from requiring a minimum wage employee to take meals as part of his compensation and have the value of the meals deducted from the minimum wage without the written consent of the employee. We conclude that such action is prohibited.

On August 26, 1974, appellant Evelyn Whitlow, [FN1] as Chief of the Division of Industrial Welfare, Department of Industrial Relations for the State of California, announced her intention to institute a "new policy" regarding certain provisions of the then current minimum wage order of the Industrial Welfare Commission.

> FN1 The writ of mandate issued by the trial court was directed to Whitlow, who is hereinafter described as "appellant" although the agency itself is also a named party and appellant.

Section 4 of Minimum Wage Order No. 1-74 allowed employers in the restaurant industry to take a credit for the value of meals furnished employees against the minimum wage otherwise payable. The "new policy" set forth in a document entitled "Meal Policy for Restaurants Only," inter alia, prohibited a credit against the minimum wage for the dollar value of meals furnished without the *specific written consent of the employee*. It further provided that such consent could be revoked at the beginning of each month. This new policy was based on appellant's determination that the current construction of section 4 of Order No. 1-74 was in violation of section 450 of the Labor Code.

Respondent California State Restaurant Association filed a petition for a writ of mandate to in effect restrain the appellant from putting the "new policy" into operation. The trial court entered judgment granting a ***344** peremptory writ of mandate in favor of respondent. The appeal [FN2] is from the judgment.

> FN2 Appellant in her brief has limited her appeal to that portion of the judgment

enjoining enforcement of appellant's "New Policy" of requiring prior revocable employee consent to meal credit deductions from the cash minimum wage.

I

The court below concluded that section 4 of Minimum Wage Order No. 1-74 "authorizes employers in the restaurant industry to take a credit ... for meals furnished or reasonably made available to employees without the specific written consent of such employees to have the value of such specific meals credited by employers against the minimum wage otherwise due the employees ...." Because the appellant's "new policy" would thus constitute an amendment to the order, the court held that it was beyond the scope of her authority, as only the Industrial Welfare Commission has the power to adopt or change a minimum wage order. (Lab. Code, § 1182.)

Appellant contends that the wage order is silent on the issue of consent to meal credit deductions, and that there has been no administrative interpretation of the regulation to the effect that such deductions are authorized in the absence of employee consent. Thus, appellant argues, the policy statement was within the authority of the Division of Industrial Welfare to take all proceedings necessary to enforce minimum wage regulations in accordance with the law, specifically, the prohibitions of Labor Code section 450. (Lab. Code, § § 59, 61, 1195.)

(1) Generally, the same rules of construction and interpretation which apply to statutes govern the interpretation of rules and regulations of administrative agencies. (*Cal. Drive-In Restaurant Assn.* v. *Clark*, 22 Cal.2d 287, 292 [140 P.2d 657, 147 A.L.R. 1028]; *Intoximeters, Inc. v. Younger*, 53 Cal.App.3d 262, 270 [125 Cal.Rptr. 864].) The Industrial Welfare Commission acts as a quasi-legislative body in promulgating minimum wage orders. (*Rivera v. Division of Industrial Welfare*, 265 Cal.App.2d 576, 586 [71 Cal.Rptr. 739].) (2) Of course, the cardinal rule of construction is that the court should ascertain the intent of the promulgating body so as to effectuate the intended purpose of the statute or regulation. (*East Bay Garbage Co. v. Washington Township Sanitation Co.*, 52 Cal.2d 708, 713 [344 P.2d 289]; *California Sch. Employees Assn. v. Jefferson Elementary Sch. Dist.*, 45 Cal.App.3d 683, 691 [119 Cal.Rptr. 668]; Code Civ. Proc., § 1859.) This rule has been extended to ***345** construction of administrative regulations. (*Cal. Drive-In Restaurant Assn. v. Clark, supra*.)

(3a) Thus, the commission's intent is the most significant factor in interpretation of its wage order. In reaching the conclusion that meal credit deductions without employee consent are authorized by section 4 of order No. 1-74, the trial court properly relied on two additional principles of construction. (4) First, "contemporaneous administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is clearly erroneous or unauthorized." (*Rivera v. City of Fresno*, 6 Cal.3d 132, 140 [98 Cal.Rptr. 281, 490 P.2d 793].) (5) Second, reenactment of a provision which has a meaning well-established by administrative construction is persuasive evidence that the intent of the enacting authority was to continue the same construction previously applied. (*Cooper v. Swoap*, 11 Cal.3d 856, 868 [115 Cal.Rptr. 1, 524 P.2d 97]; *Cal. M. Express. v. St. Bd. of Equalization*, 133 Cal.App.2d 237, 239-240 [283 P.2d 1063].)

(3b) Appellant urges that there was no administrative construction of the prior wage orders, but only an interpretation by the restaurant industry. The record belies this assertion. Since 1952, every minimum wage order relating to the restaurant industry has specified that "when meals are furnished by the employer *as a part of the minimum wage*, they may not be evaluated in excess of the following [cash equivalents] ...." (Italics added.) Since at least 1944, it has been the open and recognized practice of the restaurant industry for employers to take a meal credit against the minimum wage without employee consent. Division of Industrial Welfare "Policy" statements prior to the appellant's 1974 notice make no reference to any requirement of employee consent. Moreover, the commission considered a proposal that wage order No. 1-74 expressly requires employee consent to such meal credits, but this was written out of the final version of the order. Just as "[t]he sweep of the statute should not be enlarged by insertion of language which the Legislature has overtly left out" (*People v. Brannon*, 32 Cal.App.3d 971, 977 [108 Cal.Rptr. 620]), so the wage order should not be interpreted as including a limitation declined by the commission. In the face of a well-known and documented interpretation and application of the regulation over many years, the commission ratified that construction by reenacting the regulation in substantially the same form, without substantive change. ***346**

This interpretation was thus properly accepted by the

trial court as authoritatively intended by the commission in wage order No. 1-74. However, this is not dispositive of the matter, for it is clear that the administrative regulation, as interpreted, must not conflict with applicable state laws; to the extent that it does so conflict, the regulation is void.

II

(6a) Appellant contends that the meal credit provision of order No. 1- 74, as construed, violates Labor Code section 450, which provides: "No employer, or agent or officer thereof, or other person, shall compel or coerce any employee, or applicant for employment, to patronize his employer, or any other person, in the purchase of any thing of value."

Respondent argues that the meal credit provision does not permit an employer to "compel or coerce" an employee to "purchase" a meal within the meaning of section 450, but rather merely authorizes the employer to reduce his *cash* minimum wage obligation by part payment "in kind." Thus, respondent contends, the meal credit against the minimum wage otherwise payable is not a "purchase" within section 450, but is instead a partial fulfillment of the employer's minimum wage obligation; where a meal is provided an employee is not entitled to the higher cash minimum wage. Respondent urges that under Labor Code sections 1182 and 1184, [FN3] the Industrial Welfare Commission has an implied power to authorize in kind payment of wages without employee consent to such manner of payment, and the wage order as construed is a valid exercise of such authority.

> FN3 Section 1182 provides in pertinent part: "After the wage board conference and public hearing, as provided in this chapter, the commission may, upon its own motion or upon petition, fix:
> "(a) A minimum wage to be paid to employees engaged in any occupation, trade, or industry in this state, which shall not be less than a wage adequate to supply the necessary costs of proper living to, and maintain the health and welfare of such employees."
> Section 1184 provides: "After an order has been promulgated by the commission making wages ... mandatory in any occupation, trade, or industry, the commission may at any time upon its own motion, or upon petition of employers or employees reconsider such order for the purpose of altering, amending, or rescinding such order or any portion thereof. For this purpose the commission shall proceed in the same manner as prescribed for an original order. Such altered or amended order shall have the same effect as the original order."

(7) Administrative bodies and officers have only such powers as have expressly or impliedly been conferred upon them by the Constitution or ***347** by statute. (*Ferdig v. State Personnel Bd.*, 71 Cal.2d 96, 103 [77 Cal.Rptr. 224, 453 P.2d 728].) In the absence of valid statutory or constitutional authority, an administrative agency may not, under the guise of regulation, substitute its judgment for that of the Legislature. Administrative regulations in conflict with applicable statutes are null and void. (*Harris v. Alcoholic Bev. Etc. Appeals Bd.*, 228 Cal.App.2d 1, 6 [39 Cal.Rptr. 192]; *Hodge v. McCall*, 185 Cal. 330, 334 [197 P. 86].)

Certain additional principles of construction are helpful to resolution of this controversy. (8) In order that legislative intent be given effect, a statute should be construed with due regard for the ordinary meaning of the language used and in harmony with the whole system of law of which it is a part. (*Anaheim Union Water Co. v. Franchise Tax Bd.*, 26 Cal.App.3d 95, 106 [102 Cal.Rptr. 692].) (9) A remedial statute must be liberally construed so as to effectuate its object and purpose, and to suppress the mischief at which it is directed. (*City of San Jose v. Forsythe*, 261 Cal.App.2d 114, 117 [67 Cal.Rptr. 754]; *Lande v. Jurisich*, 59 Cal.App.2d 613, 616-617 [139 P.2d 657].)

(6b) Section 450 manifests a legislative intent to protect wage earners against employer coercion to purchase products or services from the employer. In the context of the present case, that section is plainly part of "the established policy of our Legislature of protecting and promoting the right of a wage earner to all wages lawfully accrued to him." (*City of Ukiah v. Fones*, 64 Cal.2d 104, 108 [48 Cal.Rptr. 865, 410 P.2d 369].) The Legislature evidently determined "that the evil thus to be guarded against was sufficiently prevalent to require legislative action, and the remedy ought not to be defeated by judicial construction if that result can reasonably be avoided." (*Lande v. Jurisich, supra*, 59 Cal.App.2d at p. 617.)

While it may be argued that "in kind" payment of wages is not technically or narrowly speaking a "compelled purchase," there is no perceptible practical difference between the two. Where an employee is not allowed the choice between cash and

in kind payment, but rather is forced to accept goods or services from his employer in lieu of cash as part of the minimum wage, the same mathematical result obtains as if the employer had paid the wages in cash with the condition that the employee spend with the employer an amount equal to the allowable credit (here, on a meal) at the end of each shift. This latter practice unquestionably violates section 450. Employers cannot be permitted to evade the salutary objectives of the statute by indirection. ***348**

Moreover, sections 1182 and 1184, urged by respondent in support of its contentions, are similarly subject to the rule of liberal construction of remedial legislation. (*California Grape etc. League* v. *Industrial Welfare Com.*, 268 Cal.App.2d 692, 698 [74 Cal.Rptr. 313].) Additionally, the statutes must be construed in harmony with section 450, so as to carry out the fundamental legislative purposes of the whole act. (*Earl Ranch, Ltd. v. Industrial Acc. Com.*, 4 Cal.2d 767, 769 [53 P.2d 154]; *Moyer v. Workmen's Comp. Appeals Bd.*, 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) In light of the prohibition against compelled purchases in section 450, the implied power of the commission to authorize in kind payments must be limited to situations in which such manner of payment is authorized by specific and prior voluntary employee consent. This limitation is consistent with the strong public policy favoring full payment of minimum wages, which the Legislature has effectuated by making payment of less than the minimum wage unlawful. (Lab. Code, § 1197.)

The judgment is reversed with directions to the trial court to deny the petition for writ of mandate.

Rattigan, J., and Christian, J., concurred.

A petition for a rehearing was denied June 16, 1976, and respondent's petition for a hearing by the Supreme Court was denied July 15, 1976. ***349**

Cal.App.1.Dist.,1976.

California State Restaurant Ass'n v. Whitlow

END OF DOCUMENT

Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and Respondent,
v.
FRANCIS V. SEE, Objector and Appellant.
No. S087881.

Supreme Court of California

June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties ***905** in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, § § 153, 153A, 153B.]

(2) Statutes § 29--Construction--Language--Legislative Intent.
In statutory construction cases, a court's fundamental

task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the ***906** ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes § 46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.
When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.
A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.
A trial ***907** court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.
Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

Kitchen & Turpin, David C. Turpin; Law Office of Herb Fox and Herb Fox for Objector and Appellant.

Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child

born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory ***908** construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, [FN1] objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

> FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" [FN2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as $5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

> FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold ***909** divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children-Margaret and Daniel-as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted

Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent ...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions-section 6450, section 6452, and section 6453-must be considered. ***910**

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. *Acknowledgement*

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [***911**105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272; *People v. Lawrence*, *supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at

p. 272.) In such cases, we " ' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge " is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit"].) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly " confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. [FN3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

> FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, ***912** test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement

requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation ***913** of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigaran* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346] (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child " and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano*, *supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano*, *supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing ***914**Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano*, *supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.) [FN4] Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

> FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975, ch. 1244, § 8, p. 3196.)
> In 1975, the Legislature enacted California's

> Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers*, *supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was " 'to own or admit the knowledge of.' " (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388- 389 [330 P.2d 452]; see *Estate of Gird*, *supra*, 157 Cal. at pp. 542- 543), but, as discussed, the word retains virtually the same meaning in general usage today-"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his ***915** one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird*, *supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird*, *supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. [FN5] (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394.)

> FN5 Section 255 of the former Probate Code provided in pertinent part: " ' Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock ....' " (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous

subject uses identical or substantially similar language, we may presume that the Legislature intended the ***916** same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452. [FN6]

> FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayers*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. ***917**

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court

acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops " (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, ***918**257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird*, *supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity. " (*Id.* at p. 276.) ***919**

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of

Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, *supra*, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio*, *supra*, 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock. [FN7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such ***920** exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

> FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child. " (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted

to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*, 7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. [FN8] ***921**

FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262- 263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, § § 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. *Requirement of a Natural Parent and Child Relationship*

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. [FN9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, [FN10] if a court order was entered during the father's lifetime declaring paternity. [FN11] (§ 6453, subd. (b)(1).)

FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of

> the alleged natural father shall be determined as set forth in Section 7664."
>
> FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he ***922** argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33] (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir*, *supra*, 59 Cal.App.4th at pp. 1516- 1517, 1521.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, [FN12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

> FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. ***923** It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762] (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process

right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease*'s reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease*, *supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. ***924**

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir*, *supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) " 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.' " (*Estate of De Cigaran*, *supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. ***925**

BROWN, J.

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of

Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession-to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own " in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. ***926**

Cal. 2001.

Estate of DENIS H. GRISWOLD, Deceased. NORMA B. DONER-GRISWOLD, Petitioner and Respondent, v. FRANCIS V. SEE, Objector and Appellant.

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ANNE T. HENDERSON et al., Plaintiffs and Appellants,
v.
MANN THEATRES CORPORATION OF CALIFORNIA, Defendant and Respondent
Civ. No. 48810.

Court of Appeal, Second District, Division 1, California.

December 28, 1976.

SUMMARY

In an action by a lessor seeking a declaration that a provision in the lease that rent be paid in gold coin was valid, the trial court concluded that the gold coin clause provision in the lease was prohibited by the Joint Resolution of 1933, 31 U.S.C. § 463, providing that payment in gold for any obligation was against public policy. The court also concluded that the Joint Resolution of 1933 was not repealed, expressly or impliedly, by the 1973 amendment of the Par Value Modification Act, Public Law No. 93-110, providing that a person may deal with gold as a commodity, and that defendant was not obligated to pay the rent in gold coin. Finally the court concluded that the gold clause provision of the lease was not a contract for payment in gold coin or gold bullion as a commodity, but was a contract for payment of money. Predecessors of plaintiff and defendant had, in 1929, entered into a 99-year lease which contained the clause requiring payment in gold. (Superior Court of Los Angeles County, No. C 113808, William P. Hogoboom, Judge.)

The Court of Appeal affirmed, holding that no provision of the 1973 act expressly repealed the Joint Resolution of 1933, and that the 1973 amendment of the Par Value Modification Act, Public Law 93-110, § 3, subd. (b), providing that no provision of any law in effect on the date of enactment of the act may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold, did not impliedly repeal the Joint Resolution of 1933. The court also held that the Joint Resolution of 1933 does not deny due process. Finally, the court held that the lease clause requiring payment in gold coin was not a contract for payment in gold coin or gold bullion, but was a contract for the payment of money, and it therefore rejected plaintiff's contention that since it was impossible or illegal to pay in gold coin, payment should ***398** be made in gold bullion. (Opinion by Wood, P. J., with Lillie and Hanson, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Money § 3--What Is Legal Tender--Gold Coin.
No provision of the 1973 amendment of the¶ Value Modification Act, Public Law No. 93-110, providing that a person may deal with gold as a commodity, expressly repeals the Joint Resolution of 1933, providing that payment of any obligation in gold is against public policy, and the 1973 amendment of the¶ Value Modification Act, Public Law 93-110, § 3, subd. (b), providing that no provision of any law in effect on the date of enactment of the act may be construed to prohibit any person from dealing with gold, does not impliedly repeal the Joint Resolution of 1933. Hence, in an action by a lessor seeking a declaration that a clause in a 99-year lease entered into in 1929 requiring payment in gold was valid, the trial court did not err in concluding that payment was not required in gold.

[See **Cal.Jur.2d,** Money, § 3; **Am.Jur.2d,** Money, § 16.]

(2) Statutes § 28--Construction--Language.
The expression of certain things in a statute necessarily involves exclusion of other things not expressed.

(3) Money § 5--Kinds of Money--Effect of Act Permitting Dealing With Gold.
31 U.S.C. § 315b, discontinuing gold coinage, and 31 U.S.C. § 446, providing that all acts inconsistent with § 315b are repealed, were not repealed by 1973 amendment of the¶ Value Modification Act, Public Law 93-110, providing that a person may deal with gold as a commodity.

(4) Administrative Law § 10--Powers and Functions of Administrative Agencies--Administrative Construction and Interpretation of Laws.
Administrative interpretation of a statute will be afforded great respect by the courts.

(5) Money § 5--Kinds of Money--Constitutionality of Law Prohibiting Payment in Gold.
The Joint Resolution of 1933, prohibiting ***399** payment of any obligation in gold, is not

unconstitutional as a denial of due process.

(6) Money § 5--Kinds of Money--Payment in Gold Coin.
In an action by a lessor seeking a declaration that a provision in a 99-year lease entered into in 1929 requiring payment in gold coin was valid, the trial court correctly concluded that the gold clause provision of the lease was not a contract for payment in gold coin or gold bullion, but was a contract for the payment of money, and thus the lessor could not successfully contend that since it was impossible or illegal to pay in gold coin, payment should be made in gold bullion.

COUNSEL

Charles L. Crouch, Jr., and David J. Prager for Plaintiffs and Appellants.

O'Melveny & Myers, Philip F. Westbrook and Bennett W. Priest for Defendant and Respondents.

WOOD, P. J.

In 1929 the owners of vacant land on Hollywood Boulevard leased the property for a term of 99 years. Plaintiffs are successors in interest to the lessors; and defendant is the successor in interest to the lessee. Plaintiffs seek a declaration that a provision in the lease that the rent be paid in gold coin of the United States of America is valid. The trial court concluded that the provision for payment of the rent in gold coin is prohibited by the "Joint Resolution of 1933" enacted by Congress (31 U.S.C. § 463); that the joint resolution was not repealed, expressly or impliedly, by the 1973 amendment of the¶ Value Modification Act (Pub. Law No. 93-110. Cong., H.R. No. 6912), and that defendant is not obligated to pay the rent in gold coin.

Plaintiffs (lessors) appeal from the judgment. They assert that said joint resolution was repealed by said 1973 act, effective December 31, 1974, and the repeal revived the gold clause in the lease, effective on that date. They assert further if the 1973 act did not repeal the resolution, the ***400** resolution violates due process of law. Appellant also makes other contentions, which relate to the contractual doctrines of "Impossibility" and "Illegality."

The case was submitted to the trial court on an agreed statement of facts. There is no controversy as to the facts. Appellants assert that the findings of fact and conclusions of law provide no basis for the judgment; and that the 1973 amendment of the¶ Value Modification Act "mandates that judgment be granted" in favor of plaintiffs. The facts (and findings) are in substance as follows:

On October 8, 1929, the predecessors in interest to the parties herein entered into a written ground lease whereby the property was leased by the lessors to the lessee for a period of 99 years, commencing November 1, 1929. A provision of the lease was: The rental for such 99-year term shall be $1,457,500, which sum the lessee agrees to pay the lessors in installments as follows: $750 on the first day of each calendar month of said term commencing November 1, 1929, to and including May 1, 1934; $1,250 on the first day of each calendar month of said term commencing June 1, 1934, to and including October 1, 2028. "The lessee agrees to pay said rentals to the lessors in gold coin of the United States of America of the present standard of weight and fineness (one dollar containing twenty-five and eight-tenths grains of which twenty-three and twenty-two hundredths grains are fine gold) or its equivalent in lawful money of the United States of America, at such place in the City of Los Angeles, California, as the lessors may, from time to time, in writing, designate as the place for the payment of the rent. But the lessee may make such rental payments by bank check in accordance with prevailing business practices, and the place for the payment of the rent shall be at the Hollywood Office of California Bank in the City of Los Angeles, California, until otherwise specified by the lessors as aforesaid."

A theatre building was constructed on the land; and, through mesne conveyances, the plaintiffs are the lessors, and the defendant is the lessee, of the ground lease.

In June 1933, Congress enacted the Joint Resolution of 1933 as the result of the monetary change referred to as "going off the gold standard." Said joint resolution was thereafter codified in section 463 of title 31 of the United States Code, as follows: ***401**

"Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies;

"(a) Every provision contained in or made with respect to any obligation which purports to give the

obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this section, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations. June 5, 1933, c. 48, § 1, 48 Stat. 113."

Since the enactment of said joint resolution in 1933, the lessee has paid and is presently paying the rent due under the herein lease in legal tender money of the United States, including payment of $1,250 for the month of January 1975 and $1,250 for the month of February 1975.

In September 1973, the Congress enacted Public Law No. 93-110 (93d Cong., H.R. No. 6912), which provides in part as follows:

"An Act to amend the¶ Value Modification Act, and for other purposes: [¶]

. . . . . .

"Sec. 3. (a) Sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C. 442 and 443) are repealed.

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order under authority of any such law, ***402** may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold."

In July 1974, Congress enacted Public Law No. 93-373 (93d Cong., S. 2665, 88 Stat. 445) which provides in part as follows:

"Sec. 2. Subsections 3(b) and (c) of Public Law 93-110 (87 Stat. 353) are repealed and in lieu thereof add the following:

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date sub-sections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

"(c) The provisions of subsections (a) and (b) of this section shall take effect either on December 31, 1974, or at any time prior to such date that the President finds and reports to Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position." Said provisions became effective on December 31, 1974.

The trial court's conclusions of law were in substance as follows: Enforcement of the gold clause provision of the lease pertaining to payment of the rent in gold coin of the United States is prohibited by the provisions of the Joint Resolution of 1933. Defendant is not obligated to make payment in gold coin of the weight and fineness in effect on October 8, 1929, or its equivalent in lawful money of the United States. The Joint Resolution of 1933 was not repealed, either expressly or by implication by the 1973 amendment of the¶ Value Modification Act. The gold clause provision of the lease was not and is not a contract for payment in gold coin or gold bullion as a commodity, but was and is a contract for the payment of money. Defendant has fully performed all conditions of the lease to be performed on its part and has fully discharged its obligation to pay rent to plaintiffs for the months of January and February 1975.

(As hereinabove stated, defendant paid $1,250 as rent for each of those months. Plaintiffs alleged in their complaint that the rental due for those months in gold coin or its equivalent was $19,300.) ***403**

As above stated, appellants assert that the trial court erred in concluding that the 1973 act did not repeal the Joint Resolution of 1933, expressly or impliedly.

As above shown, section 3, subdivision (a) of the 1973 act expressly repealed sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C., § § 442, 443). (1a) No provision of the 1973 act expressly repealed the Joint Resolution of 1933. (2) A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed - *expressio unius est exclusio alterius*. (See *Gilgert v. Stockton Port District*, 7 Cal.2d 384, 387 [60 P.2d 847].)

(1b) Appellants argue that subdivision (b) of section 3 of said 1973 act impliedly repealed the Joint Resolution of 1933. Subdivision (b), as heretofore stated, provides that "No provision of any law in effect on the date of enactment of the Act, and no rule, regulation, or order under authority of any such law, may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold."

Appellants assert that subdivision (b) "effectively repealed all laws restricting transactions in gold," and that legislative intent to repeal "all laws which prohibit the private purchase or dealing with gold" is shown by cited statements of a congressional committee that analyzed the bill from which the act arose and by a cited statement by Representative Windall. One of the cited statements of the committee (H.R. Rep. No. 93-203, 93d Cong., 1st Sess., 1973 U.S. Code Cong. & Admin. News 2050, 2052) is that said section 3 of the act "would repeal the statutory and regulating provisions now applying to the ownership of gold ... Specifically this section would repeal sections 3 and 4 of the Gold Reserve Act of 1934, and all other laws, rules and regulations and orders which prohibit any person from purchasing, holding, selling, or otherwise dealing in gold." The other cited statement by the committee (H.R. Rep. No. 93-203, *supra*, 2062) is that "... we approved an amendment repealing Section 3 and 4 of the Gold Reserve Act, which provides ... that regulations ... now in effect prohibiting purchase, sale, holding or other dealing in gold, shall be repealed. ..." The cited statement by Representative Windall is, "... Americans should be able to own or deal in gold as they do in any other commodity." (119 Cong. Rec. H. 16970 (daily ed. May 29, 1973).)

As respondent states, those cited statements in effect relate to the purchase, sale, and holding of gold as a commodity. Respondent ***404** concedes that the 1973 act abrogated statutory or regulatory provisions relating to *ownership* of gold as a *commodity*; but respondent does assert that the 1973 act was not intended to affect the Joint Resolution of 1933, which denied gold monetary standing, e.g., for payment of debts in gold.

(3) Contrary to appellants' assertion that the intent of the 1973 act was to "effectively repeal all laws restricting transactions in gold," some sections of title 31 of the United States Code remain in effect, for example, section 315b thereof which discontinues gold coinage, and section 446 thereof which provides that all acts inconsistent with said section 315b are repealed. As respondent asserts, appellants are arguing in effect that the gold monetary standard was reinstated by the 1973 act.

Congressional intent regarding the 1973 act was stated by the chairman of the subcommittee which handled the bill, as follows: "I want to emphasize that this would not mean that we intend to allow the writing of contracts in gold, or otherwise change the joint resolution on gold. Our intention is merely to allow individuals to buy, sell and own gold if and when it is possible to do this without sacrificing our national interest." [FN1] (119 Cong. Rec. 16968 (daily ed. May 29, 1973).) A representative sponsoring the bill stated: "It is essential that the language be quite clear, that what we are proposing is simply the elimination of any impediment upon American citizens from *ownership* of gold." (Italics added.) (119 Cong. Rec. 16980 (daily ed. May 29, 1973).)

> FN1 Subdivision (c) of section 3 of the 1973 act provides, as previously stated, that the provisions of this section shall take effect when the President finds and reports to Congress that "international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

Governmental agencies have interpreted the 1973 act as not repealing or modifying the Joint Resolution of 1933. [FN2] (4) Administrative interpretation of a statute will be afforded great respect by the courts. (*Noroian v. Department of Administration*, 11 Cal.App.3d 651, 655 [89 Cal.Rptr. 889].) ***405**

FN2 For example, the Department of the Treasury issued a news release on December 9, 1974, in response to inquiries whether repeal of the restrictions on private ownership of gold affected "continuing validity" of the Joint Resolution of 1933. The news release stated in part:
"Under the Resolution a contract clause providing for payment in gold, or in United States dollars equivalent to a certain amount of gold, is not enforceable if the subject of the contract is something other than gold, so that gold as a commodity has no relationship to the business being transacted. In such a case, gold would be used solely for the purpose of establishing the value of the obligation. This view is based on judicial decisions which held unenforceable a lease providing for payment in gold bullion as one method of rent settlement, since the intention of the parties by using gold in the contract was solely to stabilize the dollar value of the rent. *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U.S. 324 (1937); *Emery Bird Thayer Dry Goods Co. v. Williams*, 107 F.2d 965 (1939). Similarly, loans of certificates of deposit repayable in gold, or in an amount of dollars measured in terms of gold, would be unenforceable. ... The United States law making gold clauses unenforceable has been in effect solely during the period in which private ownership of gold by United States citizens was prohibited. Nonetheless, there is nothing inconsistent between private ownership of gold and the Gold Clause Joint Resolution." Also, the Federal Reserve Board issued guidelines as follows: "... obligations payable in gold are still unenforceable under the law making it illegal for banks to enter into deposit contracts giving customers an option of taking payment in cash or gold." (Government Issues Warnings on Gold Dealings, Comm. & Finan. chr. 219:2, Dec. 16, 1974.)

In *Holyoke Power Co. v. Paper Co.* (1937), 300 U.S. 324 [81 L.Ed. 678, 57 S.Ct. 485], a lease entered into prior to the Joint Resolution of 1933 provided for payment of rent in "a quantity of gold which shall be equal in amount to fifteen hundred dollars ($1500) of the gold coin of the United States of the standard weight and fineness of the year 1894, or the equivalent of this commodity in United States currency." In 1934 (after Congress passed the Joint Resolution of 1933), the lessor contended that the rent was payable in fine gold as provided in the lease, and the lessee contended that by force of the joint resolution the rent was payable dollar for dollar, in the then prevailing currency. The district court and the circuit court of appeals held in favor of the lessee. The Supreme Court affirmed the judgment, and said (p. 335 [81 L.Ed. at p. 681]): "The obligation was one for the payment of money, and not for delivery of gold as upon the sale of a commodity."

It was also said therein (300 U.S. at p. 337 [81 L.Ed. at p. 682]): "A contract for the payment of gold as the equivalent of money, and, *a fortiori* a contract for the payment of money measurable in gold, is within the letter of the Joint Resolution of June 5, 1933, and equally within its spirit." The court also rejected (pp. 340-341 [81 L.Ed. at pp. 684-685]) an argument that the joint resolution, although made for protection of the monetary system, arbitrarily suppressed the rental covenant and was inconsistent with the Fifth Amendment.

The court therein concluded (p. 341 [81 L.Ed. at pp. 684-685]): "In last analysis, the case for the petitioner amounts to little more than this, that the effect of the Resolution in its application to these leases is to make the value of the dollars fluctuate with variations in the weight and fineness of the monetary standard, and thus defeat the expectation of the parties that the standard would be constant and the value relatively ***406** stable. Such, indeed, *is* the effect, and the covenant of the parties is to that extent abortive. But the disappointment of expectations and even the frustration of contracts may be a lawful exercise of power when expectation and contract are in conflict with the public welfare. 'Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity.' *Norman v. Baltimore & Ohio R. Co.*, *supra*, pp. 307, 308. To that congenital infirmity this covenant succumbs."

In the *Norman* case (*Norman v. Baltimore & O. R. Co.*, 294 U.S. 240 [79 L.Ed. 885, 55 S.Ct. 407, 95 A.L.R. 1352]), cited in the *Holyoke* case, *supra*, the Supreme Court discussed (p. 295 et seq. [79 L.Ed. at p. 895 et seq.]) the background and purposes of the Joint Resolution of 1933 - in essence the purposes of establishing a monetary system not based upon gold

and removal of gold as legal tender; discussed clauses of contracts providing for payment in gold, and held (p. 302 [79 L.Ed. at p. 899]) that the gold clauses in the bonds in that case were not contracts for payment in gold coin as a commodity but were contracts for payment of money; discussed (pp. 306-311 [79 L.Ed. at pp. 901-904]) the power of Congress to regulate currency and to establish the monetary system for the country, and held (p. 311) that such gold clauses interfered with the policy of Congress in exercising that authority. The court noted (p. 315 [79 L.Ed. at p. 906]) that according to appellants' contentions, the indebtedness of governmental and industrial obligors under gold clause provisions must be met by an amount of currency determined by the former gold standard, whereas the receipts of such obligors would be determined under the new (nongold) standard, and that dislocation of the domestic economy would be caused by such a disparity of conditions. Then it was said (p. 316 [79 L.Ed. at p. 906]): "We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration. Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. ... The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority. Dismissing that untenable assumption, the facts must be faced. We think that it is clearly shown that these clauses interfere with the exertion of the power granted ***407** to the Congress and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed."

(1c) In the present case, the trial court did not err in concluding that the Joint Resolution of 1973 was not repealed. (5) The joint resolution is not unconstitutional. (See *Holyoke Power Co. v. Paper Co., supra*, 300 U.S. 324; *Norman v. Baltimore & O. R. Co., supra*, 294 U.S. 240.)

(6) Appellants' contentions regarding the contractual doctrines of "Impossibility" and "Illegality" are to the effect that if it is impossible or illegal to pay the rent in gold coin, then it should be payable in gold bullion. [FN3] A similar argument was rejected in the *Holyoke* case, *supra*, 300 U.S. at pp. 334-335 [81 L.Ed. at pp. 680-681]. The trial court herein did not err in concluding that the gold clause provision of the lease was not a contract for payment in gold coin or gold bullion, but was a contract for the payment of money.

> FN3 According to respondent, appellants originally contended that payment should be in gold coin of the weight and fineness as it existed on October 8, 1929; and that appellants "shifted" their position on appeal, "acknowledging the impossibility and illegality of paying in gold coin." They now contend that payment should be in gold bullion.

The judgment is affirmed.

Lillie, J., and Hanson, J., concurred.

Appellants' petition for a hearing by the Supreme Court was denied February 23, 1977. ***408**

Cal.App.2.Dist.,1976.

Henderson v. Mann Theatres Corp. of California

END OF DOCUMENT

Briefs and Other Related Documents

Supreme Court of California
In re HOWARD N., a Person Coming Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Howard N., Defendant and Appellant.
No. S123722.

Feb. 24, 2005.

Background: People filed petition to extend commitment of juvenile sex offender. Following a jury trial, the Superior Court, Kern County, No. JW081822-03, Jon E. Stuebbe, J., extended the juvenile's commitment. Juvenile appealed. The Court of Appeal reversed without remand. The Supreme Court granted People's petition for review, superseding opinion of the Court of Appeal.

Holdings: The Supreme Court, Brown, J., held that:
(1) to preserve its constitutionality, juvenile extended detention scheme was to be construed to require finding that person's mental deficiency, disorder, or abnormality caused serious difficulty in controlling his dangerous behavior, and
(2) offender was entitled to new commitment proceeding.
Judgment of the Court of Appeal reversed and case remanded.

Opinion, 10 Cal.Rptr.3d 44, superseded.

West Headnotes

[1] Constitutional Law 255(2)
92k255(2) Most Cited Cases
Civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. U.S.C.A. Const.Amend. 14.

[2] Infants 227(1)
211k227(1) Most Cited Cases
To preserve constitutionality of juvenile extended detention scheme under due process clause, notwithstanding lack of express requirement, scheme must be construed to require a finding that the person's mental deficiency, disorder, or abnormality causes serious difficulty in controlling his dangerous behavior. U.S.C.A. Const.Amend. 14.; West's Ann.Cal.Welf. & Inst.Code § 1800 et seq.
See 3 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Punishment, § 87; 10 Witkin, Summary of Cal. Law (9th ed. 1989) Parent and Child, § 826; Cal. Jur. 3d, Penal and Correctional Institutions, § § 57, 58.

[3] Constitutional Law 48(1)
92k48(1) Most Cited Cases
If feasible within bounds set by their words and purpose, statutes should be construed to preserve their constitutionality.

[4] Infants 227(1)
211k227(1) Most Cited Cases
In proceedings under juvenile extended detention scheme, that the person's mental deficiency, disorder, or abnormality causes serious difficulty in controlling his dangerous behavior must be alleged in the petition for extended commitment, and demonstrated at the probable cause hearing and any ensuing trial. West's Ann.Cal.Welf. & Inst.Code § § 1800, 1801, 1801.5.

[5] Infants 227(2)
211k227(2) Most Cited Cases
Committed juvenile sex offender was entitled to new commitment proceeding under juvenile extended detention scheme, where jury was not instructed to find offender's mental disorder caused serious difficulty in controlling his dangerous behavior, and evidence was not such that jury necessarily made such finding. West's Ann.Cal.Welf. & Inst.Code § 1800 et seq.
*****867 **306 *122** Linnea M. Johnson, Sacramento, under appointment by the Supreme Court, and Francia M. Welker, under appointment by the Court of Appeal, for Defendant and Appellant.

Margaret Roberts for Protection and Advocacy, Inc., as Amicus Curiae on behalf of Defendant and Appellant.

Bill Lockyer, Attorney General, Manuel M. Medeiros, State Solicitor General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Lloyd G. Carter, Janet E. Neeley, Louis M. Vasquez and Kathleen A.

McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

BROWN, J.

Welfare and Institutions Code [FN1] section 1800 et seq. delineates procedures governing the extended detention of dangerous persons. In particular, it provides for the civil commitment of a person at the time he would otherwise be discharged by statute from a Youth Authority commitment. We consider whether this extended detention scheme violates due process because it does not expressly require a finding that the person's mental deficiency, disorder, or abnormality causes serious difficulty in controlling behavior. [FN2]

FN1. All further undesignated statutory references are to this code.

FN2. Neither party addresses the last prong of the issue as stated in the petition for review, i.e., whether section 1800 et seq. should require a finding that "the person's deficiency, disorder, or abnormality causes serious difficulty controlling behavior, *resulting in a well-founded risk of reoffense.*" This opinion therefore does not address that issue.

*****868** We conclude the extended detention scheme should be interpreted to contain such a requirement in order to preserve its constitutionality. However, because the jury was not instructed on this requirement, and there was little evidence defendant's mental abnormality caused him serious difficulty controlling his dangerous behavior, we further conclude defendant is entitled to a new commitment proceeding. We therefore reverse the Court of Appeal's judgment, which reversed the trial court's judgment without remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant Howard N. was committed to the Youth Authority after he molested a three-and-a-half-year-old boy. His confinement was set to expire ***123** on February 19, 2003, which was defendant's 21st birthday. Pursuant to section 1800, the Kern County District Attorney's Office filed a petition to extend defendant's confinement.

At trial, three female correctional officers testified regarding four incidents, between ****307** June and November 2002, in which defendant was observed masturbating in his room. On three of these occasions, defendant shut off the light in his room as soon as he noticed the officer observing him. On the other occasion, the incident lasted approximately two to three minutes, and there was no testimony regarding whether defendant indicated any awareness the officer was observing him.

Clinical Psychologist Deborah Leong was a counselor for defendant during his confinement. Defendant told her that during one incident described above, he was "having fantasies" that the female correctional officer "would come down from the tower and would get aggressive with him and that he would then get aggressive with her and pull her into his room and force her to have sex with him.... He also was fantasizing that she would eventually like it." "He also admitted he had similar fantasies about" one of the other female correctional officers who had observed him. He said "he began having rape fantasies when he was about 18 at another facility.... He said that he would use these fantasies to help calm his anger through fantasies of force and making her like it."

On January 29, 2003, during a sex offender group meeting led by Dr. Leong and Youth Correctional Counselor Williamson, defendant was confronted about a prior incident in which Ms. Williamson had told defendant to go to his room. "He took an aggressive stance. He told her F-U [*sic*] and some other things, gave her the finger. And he began masturbating that finger with his other hand. [Ms. Williamson] told him that she felt quite intimidated and kind of threatened to be standing near him at the time."

With respect to his outbursts of anger, defendant "expressed some concern about his outbursts and his ability to control it. He felt that it could bring him back to jail." Defendant told Dr. Leong at one point he became "so angry at staff for not coming to speak with him that he began hitting his arm against the wall and he broke his arm." He also told Dr. Leong he had previously choked another child and banged the child's head until he was pulled off. Apparently as a result, he said he was placed in a psychiatric institution. "He also talked about other instances of

firing up his anger ... and being violent ... [and] about enjoying being angry and rageful."

Near defendant's release date, a book and a poster, neither of which was made ***869** available at trial, were found in his room. Defendant was given the ***124** book, entitled Forcible Rape, by staff, and it was apparently a staff library or office book intended for training purposes for the youth correctional counselors. The poster was of a clothed woman standing above two men. The men did not have shirts on and were tied together. Dr. Leong opined, "[i]t definitely had features of sadomasochism."

Clinical Psychologist Deborah Morris conducted a psychological evaluation of defendant in November 2002. She reviewed his records, and in addition to a number of the incidents above recounted that on November 17, 2001, defendant had "been documented for choking another ward on the unit." On May 11, 2001, he "received a behavior report for leering at a female staff" member.

Dr. Morris also performed certain psychological tests. Consistent with earlier evaluations, defendant was in an elevated range "in the areas of anxiety and dependent personality disorder." He also "scored an elevated range on ... the scale that measures antisocial personality traits." He scored high on the psychosocial sex inventory, "indicating that he generally denies having ... deviant sex interests." Defendant also tends to see "other people as being against him and feels that he is the victim in most circumstances."

Defendant "scored in the positive direction on two items on the sadomasochistic scale." "[H]e answered positive to the first statement I've used leather whips and handcuffs or sharp things during sexual encounters and the second was there had been quite a few times I daydream about how pleasurable it would be to hurt someone during a sexual encounter." On the "psychopathy checklist," defendant scored 25. "A score of 30 is indicative of a psychopath," and "an average score for an adult male prisoner is 23."

Dr. Morris discussed defendant's committing offense with him, and found significant **308 his description of walking into the room where the three-year-old boy was sleeping, spanking the child, and " 'wanting to wipe the look of innocence off his face.' " "It relates to his behavior [in 2002] because he's demonstrating a pattern of ... sadistic qualities and traits in his behavior and his expressions of having thoughts ... and fantasies of raping female staff at the youth authority."

Dr. Morris observed that in June 2002, a prior section 1800 evaluation of defendant had been performed by Dr. Minkowski. "[I]n that evaluation he expressed strong concerns about [defendant's] level of dangerousness," noting defendant "tended to pair anger and sexuality in a perverse fusion," and "had elements of hostility and sadism. However, at that time he felt there was a problem with documenting dangerousness because ... [defendant] hadn't been acting out in a sexual way. This was right before we saw the incidents of the masturbation and the fantasies."

***125** Dr. Morris diagnosed defendant with "Paraphilia Not Otherwise Specified," which she stated was an abnormal mental condition for a person to have. She explained, "That diagnosis is given when the pattern of behavior doesn't fit into a specific category that's already established." Thus, while defendant could be diagnosed as having pedophilia because he molested a toddler, "I felt that wasn't a very accurate or descriptive diagnosis because the pattern that is consistent throughout time is not only specific to children. It ... has more of a sadistic quality to it. And so it would be more--more characterized by the diagnosis of sadism, which I also did not give him because ... these traits and qualities are emerging right now, and I wanted to be conservative in my diagnosis." Dr. Morris observed, "I gave him that diagnosis ***870** because he did fit in a couple of different areas, pedophilia and sexual sadism; however, it's a very serious thing to diagnose somebody with sexual sadism." Dr. Morris responded affirmatively when asked whether "a person could progress to a point where they could stop their behavior." She noted that while defendant was "disclosing a lot of very disturbing things ... this may be the first step in his treatment ... and that he could possibly, therefore, benefit from further treatment" provided by the Youth Authority.

Dr. Morris drew a connection between her diagnosis and defendant's physical dangerousness. "[B]ecause he continued to act out in a sexual way on the unit, victimizing the female officers, ... he still posed a physical danger[ ] to the community." Dr. Morris opined that "his recent behaviors of exposing himself

along with the self-report of violent rape fantasies suggest[ ] that [defendant], due to an untreated sexual disorder, continues to present an imminent danger to his community."

The jury found defendant was "physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality." The Court of Appeal reversed without remanding for a new commitment hearing, concluding the extended detention scheme was unconstitutional. It held that while the scheme required the jury to find "that the potential committee must have a mental deficiency, disorder, or abnormality that renders the person dangerous," it violated due process by not also requiring the jury to "determine whether the mental illness or abnormality causes the potential committee to have serious difficulty controlling his or her behavior and whether this loss of control results in a serious and well-founded risk of reoffense." The court further concluded the error was not harmless in this case because the jury "was not provided with the necessary information to impose a valid civil commitment." Because the court reversed on due process grounds, it did not reach defendant's equal protection claim.

We granted the Attorney General's petition for review.

***126** II. DISCUSSION

A. Background

1. Relevant Statutory Provisions

Enacted in 1963, the extended detention scheme in section 1800 et seq. provides for the civil commitment of individuals under the control of the Youth Authority. We have observed that the scheme involves neither a juvenile proceeding nor an extension of a ****309** prior juvenile court proceeding. (*In re Gary W.* (1971) 5 Cal.3d 296, 305, 96 Cal.Rptr. 1, 486 P.2d 1201 (*Gary W.*).) As relevant here, if the Department of the Youth Authority determines that discharge of a person from the control of the department at the time otherwise required by other statutes "would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality," the department shall request that a petition be filed seeking continued commitment of the person. (§ 1800.) [FN3] The "petition shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge from control of the department at the time stated would be physically dangerous to the public." [FN4] (§ 1800.)

FN3. Sections 1800 and 1802 were amended in 2003. The changes do not affect our analysis of the issue here, and we therefore refer to these statutes in their current language.

FN4. In 2003, the Legislature added section 1800.5, which provides for circumstances in which "the department has not made a request to the prosecuting attorney pursuant to Section 1800" and the Youth Authority Board "finds that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality."

*****871** If the court determines that the petition on its face supports a finding of probable cause, the court orders a probable cause hearing. (§ 1801.) At this hearing, the court determines whether there is "probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality." (*Ibid.*) If probable cause is found, the person is entitled to a jury trial. (§ § 1801, subd. (b), 1801.5.) At trial, the jury or other trier of fact is required to answer the following statutory question: "Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality?" [FN5] (§ 1801.5.) The person is entitled to "all rights guaranteed under the federal and state constitutions in criminal proceedings." (*Ibid.*) A reasonable doubt standard of proof applies, and any jury verdict must be unanimous. (*Ibid.*)

FN5. There has been no allegation or evidence in this case defendant suffers from a "physical," as opposed to a "mental," "deficiency, disorder, or abnormality," and we therefore do not discuss further this aspect of the statutory scheme.

If the trier of fact finds the defendant satisfies the statutory criteria, he may be committed for up to two years. (§ 1802.) Following the same ***127**

procedures outlined above, the defendant may be recommitted for such two-year periods indefinitely. (*Ibid.*) "These applications may be repeated at intervals as often as in the opinion of the authority may be necessary for the protection of the public, except that the department shall have the power, in order to protect other persons in the custody of the department to transfer the custody of any person over 21 years of age to the Director of Corrections for placement in the appropriate institution." (*Ibid.*)

In 1995, California enacted a civil commitment scheme for adults "immediately upon their release from prison" entitled the Sexually Violent Predators Act (SVPA). (§ 6600 et seq.; Stats.1995, ch. 763, § 3, p. 5922; *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1142, 1144, 81 Cal.Rptr.2d 492, 969 P.2d 584 (*Hubbart*).) An offender is subject to commitment if certain conditions are met, including that the person has a "diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1).) A " 'diagnosed mental disorder' " includes a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." (§ 6600, subd. (c).)

In addition, the mentally disordered offender law (MDO) is a civil commitment scheme that applies to certain offenders during or after parole. (Pen.Code, § 2960 et seq.; *In re Qawi* (2004) 32 Cal.4th 1, 23, 7 Cal.Rptr.3d 780, 81 P.3d 224.) An offender is subject to commitment under the MDO if certain conditions are met. One condition is that the offender has a "severe mental disorder ****310** that is not in remission or cannot be kept in remission without treatment." (Pen.Code, § 2962, subd. (a).) " 'Severe mental disorder' " is defined as "an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; *****872** or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term 'severe mental disorder' ... does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances." (*Ibid.*)

2. Due Process Requirements for Civil Commitment

[1] The high court has repeatedly "recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (*Addington v. Texas* (1979) 441 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323.) "Moreover, it is indisputable that involuntary ***128** commitment to a [psychiatric] hospital after a finding of probable dangerousness to self or others can engender adverse social consequences to the individual. Whether we label this phenomena 'stigma' or choose to call it something else is less important than that we recognize that it can occur and that it can have a very significant impact on the individual." (*Id.* at pp. 425-426, 99 S.Ct. 1804.)

Nevertheless, "[s]tates have in certain narrow circumstances provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety." (*Kansas v. Hendricks* (1997) 521 U.S. 346, 357, 117 S.Ct. 2072, 138 L.Ed.2d 501 (*Hendricks*).) The high court has "consistently upheld such involuntary commitment statutes provided the confinement takes place pursuant to proper procedures and evidentiary standards. [Citations.] It thus cannot be said that the involuntary civil confinement of a limited subclass of dangerous persons is contrary to our understanding of ordered liberty." (*Ibid.*)

A recent series of cases both in the United State Supreme Court and in this court has clarified that to be involuntarily civilly committed as a sexually violent predator, the person must, as a result of mental illness, have serious difficulty controlling his dangerous behavior. (*Kansas v. Crane* (2002) 534 U.S. 407, 412-413, 122 S.Ct. 867, 151 L.Ed.2d 856 (*Crane*); *Hendricks, supra*, 521 U.S. at pp. 358, 360, 117 S.Ct. 2072; *People v. Williams* (2003) 31 Cal.4th 757, 759, 772, 774, 3 Cal.Rptr.3d 684, 74 P.3d 779 (*Williams*); *Hubbart, supra*, 19 Cal.4th at pp. 1156, 1158, 81 Cal.Rptr.2d 492, 969 P.2d 584.) Thus, in *Hendricks,* the high court stated, "A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary commitment. We have sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as a 'mental illness' or 'mental

abnormality.' See, e.g., *Heller* [*v. Doe* (1993) 509 U.S. 312,] 314-315, [113 S.Ct. 2637, 125 L.Ed.2d 257] (Kentucky statute permitting commitment of 'mentally retarded' or 'mentally ill' and dangerous individual); *Allen v. Illinois*, 478 U.S. 364, 366, [106 S.Ct. 2988, 92 L.Ed.2d 296] (1986) (Illinois statute permitting commitment of 'mentally ill' and dangerous individual); *Minnesota ex rel. Pearson v. Probate Court of Ramsey Cty.*, 309 U.S. 270, 271-272, [60 S.Ct. 523, 84 L.Ed. 744] (1940) (Minnesota statute permitting commitment of dangerous individual with 'psychopathic personality'). These added statutory requirements serve to limit involuntary civil confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control. The Kansas Act is plainly of a kind ***129** with these other civil commitment statutes: It requires a finding of future dangerousness, and then links that finding to the existence of a 'mental abnormality' *****873** or 'personality disorder' that makes it difficult, if not impossible, for the person to control his dangerous behavior. [Citation.] The precommitment requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of these other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control ****311** their dangerousness." (*Hendricks*, at p. 358, 117 S.Ct. 2072.) "To the extent that the civil commitment statutes we have considered set forth criteria relating to an individual's inability to control his dangerousness, the Kansas Act sets forth comparable criteria and Hendricks' condition doubtless satisfies those criteria.... [His] admitted lack of volitional control, coupled with a prediction of future dangerousness, adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." (*Id.* at p. 360, 117 S.Ct. 2072.)

In *Crane*, *supra*, 534 U.S. 407, 122 S.Ct. 867, 151 L.Ed.2d 856, the high court revisited the Kansas Act, noting that *Hendricks* did not set forth any requirement of total or complete lack of control. (*Id.* at p. 411, 122 S.Ct. 867.) The court also noted, "We do not agree with the State, however, insofar as it seeks to claim that the Constitution permits commitment of the type of dangerous sexual offender considered in *Hendricks* without *any* lack-of-control determination. [Citation.] *Hendricks* underscored the constitutional importance of distinguishing a dangerous sexual offender subject to civil commitment 'from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings.' [Citation.] That distinction is necessary lest 'civil commitment' become a 'mechanism for retribution or general deterrence'--functions properly those of criminal law, not civil commitment. [Citations.] The presence of what the 'psychiatric profession itself classifie[d] ... as a serious mental disorder' helped to make that distinction in *Hendricks*. And a critical distinguishing feature of that 'serious ... disorder' there consisted of a special and serious lack of ability to control behavior. [¶] In recognizing that fact, we did not give to the phrase 'lack of control' a particularly narrow or technical meaning. And we recognize that in cases where lack of control is at issue, 'inability to control behavior' will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case." (*Crane*, *supra*, 534 U.S. at pp. 412-413, 122 S.Ct. 867.)

***130** In *Hubbart*, *supra*, 19 Cal.4th 1138, 81 Cal.Rptr.2d 492, 969 P.2d 584, we relied on *Hendricks* extensively in rejecting the defendant's constitutional challenges to the California SVPA. As relevant here, we stated, "Much like the Kansas law at issue in *Hendricks*, our statute defines an SVP as a person who has committed sexually violent crimes and who currently suffers from 'a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.' (§ 6600, subd. (a).) Through this language, the SVPA plainly requires a finding of dangerousness. The statute then 'links that finding' to a currently diagnosed mental disorder characterized by the inability to control *****874** dangerous sexual behavior. [Citation.] This formula permissibly circumscribes the class of persons eligible for commitment under the Act." (*Hubbart*, at p. 1158, 81 Cal.Rptr.2d 492, 969 P.2d 584, fn. omitted; see *ibid.* ["due process *requires* an inability to control

dangerous conduct"].)

We again addressed the California SVPA in *Williams, supra*, 31 Cal.4th 757, 3 Cal.Rptr.3d 684, 74 P.3d 779, which was decided after *Crane*. While the SVPA did not use *Crane's* "precise language in defining who is eligible for involuntary civil commitment as a sexually violent predator," i.e., " 'proof [that they have] serious difficulty in controlling [their dangerous] behavior,' " we nonetheless concluded the SVPA "inherently encompasses and conveys to a fact finder the requirement of a mental disorder that causes serious difficulty in controlling one's criminal sexual behavior." (*Williams*, at p. 759, 3 Cal.Rptr.3d 684, 74 P.3d 779.) In so doing, we observed that to be committed as a sexually violent predator under the SVPA, one must, among other things, have a " 'diagnosed mental disorder that makes the person ****312** a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.' (§ 6600, subd. (a)(1).) A ' "[d]iagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.' (*Id.*, subd. (c).)" (*Williams*, at p. 764, 3 Cal.Rptr.3d 684, 74 P.3d 779.) Based on this language, we concluded that "a jury instructed in the language of [the SVPA] must necessarily understand the need for serious difficulty in controlling behavior." (*Williams*, at p. 774, 3 Cal.Rptr.3d 684, 74 P.3d 779; *id.* at p. 776, 3 Cal.Rptr.3d 684, 74 P.3d 779.) "The SVPA's plain words ... 'distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.' [Citation.]" (*Williams*, at pp. 759-760, 3 Cal.Rptr.3d 684, 74 P.3d 779.) "Accordingly, separate instructions or findings on that issue are not constitutionally required, and no error arose from the court's failure to give such instructions in defendant's trial." (*Id.* at p. 777, 3 Cal.Rptr.3d 684, 74 P.3d 779, fn. omitted.)

***131** B. Analysis

[2] We now consider whether the extended detention scheme violates due process because it does not expressly require a finding that the person's mental deficiency, disorder, or abnormality causes serious difficulty in controlling his dangerous behavior. As can be seen, the statutory scheme involved in *Hendricks* and *Crane* addressed sexually violent predators, persons who suffer from an ailment that typically contains a compulsive element. However, nothing in the language of these high court cases indicates that the lack of control requirement is limited to the sexually violent predator context. Indeed, it is difficult to imagine on what basis the high court could articulate different due process standards for the civil commitment of dangerous mentally ill persons who happen to be sexually violent predators than for those dangerous mentally ill persons who are not sexually violent predators. Thus, while the high court performed its due process analysis in the sexually violent predator context, its constitutional pronouncements are instructive here.

Indeed, in both *Williams* and *Hubbart*, we described *Hendricks* and *Crane* as embodying general due process principles regarding civil commitment. *****875**(*Williams, supra*, 31 Cal.4th at p. 759, 3 Cal.Rptr.3d 684, 74 P.3d 779 [in *Crane*, "the United States Supreme Court held that the safeguards of personal liberty embodied in the due process guaranty of the federal Constitution prohibit the involuntary confinement of persons on the basis that they are dangerously disordered without 'proof [that they have] serious difficulty in controlling [their dangerous] behavior' "]; *id.* at p. 772, 3 Cal.Rptr.3d 684, 74 P.3d 779 [in *Crane* and *Hendricks*, the high court indicated that "if individuals could be civilly confined as dangerous without *any* disorder-related difficulty in controlling their dangerous behavior, there would be no adequate distinction from the general run of dangerous persons who are subject exclusively to the criminal law"]; *id.* at p. 774, 3 Cal.Rptr.3d 684, 74 P.3d 779 [*Crane's* language intended to "verify that a constitutional civil confinement scheme cannot *dispense* with impaired behavioral control as a basis for commitment"]; *Hubbart, supra*, 19 Cal.4th at p. 1156, 81 Cal.Rptr.2d 492, 969 P.2d 584 ["According to *Hendricks*, civil commitment is permissible as long as the triggering condition consists of 'a volitional impairment rendering [the person] dangerous beyond their control' "]; *Hubbart*, at p. 1158, 81 Cal.Rptr.2d 492, 969 P.2d 584 ["due process *requires* an inability to control dangerous conduct"]; *Hubbart*, at p. 1161, 81 Cal.Rptr.2d 492, 969 P.2d 584 [*Foucha v. Louisiana* (1992) 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 "is not inconsistent with the general due process

principles set forth in *Hendricks* "]; see *People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, 920, 119 Cal.Rptr.2d 1, 44 P.3d 949 ["The SVPA thus consistently emphasizes the themes common to valid civil commitment statutes, i.e., a current *mental condition or disorder* that makes it difficult or impossible to control ****313** volitional behavior and *predisposes* the ***132** person to inflict harm on himself or others, thus producing *dangerousness* measured by a high risk or threat of further injurious acts if the person is not confined"].)

The high court's pronouncements are particularly pertinent in this case. Here, defendant was diagnosed with a mental abnormality, paraphilia not otherwise specified, that was described as a sexual disorder, and which was based on his demonstration of elements of pedophilia and sexual sadism. Dr. Morris's opinion regarding defendant's dangerousness was based on this diagnosed disorder. Thus, while this is not a sexually violent predator case, there would seem little analytical basis under these circumstances to stray from the due process requirements the high court has established for the civil commitment of sexually violent predators. Moreover, the Attorney General here concedes that to be constitutional, the extended detention scheme must contain a requirement of serious difficulty in controlling dangerous behavior, in order to distinguish those persons who are subject to civil commitment from those persons more properly dealt with by the criminal law. We therefore conclude such a requirement is constitutionally mandated.

[3] We further conclude that the extended detention scheme should be interpreted to contain a requirement of serious difficulty in controlling dangerous behavior. In so doing, we are mindful that if "feasible within bounds set by their words and purpose, statutes should be construed to preserve their constitutionality." *(Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 175, 167 Cal.Rptr. 854, 616 P.2d 836 (*Hofferber*); see generally *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 615, 641-661, 47 Cal.Rptr.2d 108, 905 P.2d 1248 (lead opn. of Lucas, C.J.).)

*****876** As noted above, the high court has observed that historically it has "sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.' [Citations.] These added statutory requirements serve to limit involuntary civil confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control." (*Hendricks*, *supra*, 521 U.S. at p. 358, 117 S.Ct. 2072.)

Similarly, here, the extended detention scheme requires a finding that the person is "physically dangerous to the public" because of a "mental ... deficiency, disorder, or abnormality." (§ 1801.5.) While the statutory language does not expressly require a demonstration that the person has serious difficulty controlling his dangerous behavior, construing the existing language to include such a requirement does not appear inconsistent with legislative intent. Rather, implicit in the statutory language linking dangerousness to a "mental ... deficiency, disorder, or abnormality" is a certain ***133** legislative understanding that a person afflicted with such a condition may lack a degree of responsibility or control over his actions. In construing the language to include a requirement of serious difficulty in controlling dangerous behavior, we therefore do no violence to the words of the statute; rather the words are susceptible of that interpretation. In that situation, construing the statutory scheme to avoid constitutional infirmity demonstrates greater deference to the Legislature than simply invalidating, as the Court of Appeal did, the legislative scheme.

Moreover, the Legislature has made it clear over the history of the extended detention scheme that it is committed to making the scheme constitutional. Thus, in two cases decided on the same day, *People v. Smith* (1971) 5 Cal.3d 313, 317-319, 96 Cal.Rptr. 13, 486 P.2d 1213 and *Gary W., supra*, 5 Cal.3d at page 307, 96 Cal.Rptr. 1, 486 P.2d 1201, we held that a person subject to commitment under the extended detention scheme was constitutionally entitled to a jury trial, and could not be civilly detained longer if he were committed after criminal conviction than if by the juvenile court. Both cases were remanded to the superior court for new commitment hearings. (*Smith*, at pp. 317, 319, 96 Cal.Rptr. 13, 486 P.2d 1213; *Gary W.*, at pp. 308-309, 312, 96 Cal.Rptr. 1, 486 P.2d 1201.) In response to these two decisions, the Legislature amended the extended detention scheme to expressly provide for a jury trial and a two-year commitment limitation ****314** for all persons. (See Dept. of Youth Authority, Enrolled Bill Rep. on Assem. Bill No. 1845 (1971 Reg. Sess.)

Nov. 22, 1971, p. 1 ["The California Supreme Court, in the Harry Coley Smith case, ... and in the Gary W. case, ... held that a person who has been declared a dangerous person under [the extended detention scheme] is entitled to a jury trial to conform with due process.... This bill merely enacts the provisions as dictated by the court"]; Assem. Com. on Ways and Means, analysis of Sen. Bill No. 1877 (1979-1980 Reg. Sess.) as amended July 2, 1980, pp. 1-2 ["reduces from 5 to 2 years the length of time the Youthful Offender Parole Board can request continued detention of a ward committed from criminal court. [¶] ... [¶] ... [T]here would be no fiscal impact on the Youth Authority because the reduction in law on extended commitments simply reflects existing practice"]; Dept. of Youth Authority, Enrolled Bill Rep. on Sen. Bill No. 1877 (1979-1980 Reg. Sess.) Sept. 8, 1980, p. 2 ["There is a problem with [the] current statute which is misleading to judges, district attorneys, defense lawyers and the public. Section 1802 W & IC currently indicates that a person committed to the Youth Authority ***877** from the criminal court may have his jurisdiction extended by five years if he is found to be a dangerous person.... Case law, *People v. Smith* (1971) 5 Cal.3d 313, [96 Cal.Rptr. 13, 486 P.2d 1213], limits the extension of jurisdiction to two years.[¶] ... [T]he bill would amend § 1802 W & IC to reduce the extended detention of dangerous ... wards committed by adult courts from five to two years and conforms [the] statute to case law"].)

***134** Likewise, in *People v. Superior Court (Vernal D.)* (1983) 142 Cal.App.3d 29, 35-36, 190 Cal.Rptr. 721, the Court of Appeal held that the extended detention scheme was unconstitutional to the extent it authorized a commitment based on less than a unanimous jury verdict. For the guidance of the trial court on remand, the Court of Appeal also concluded that the reasonable doubt standard of proof applied. (*Id.* at p. 36, fn. 3, 190 Cal.Rptr. 721.) While the trial court had dismissed the petition for extended commitment, the Court of Appeal concluded dismissal was erroneous, and that instead Vernal D. was entitled to a jury trial on the dangerousness issue. (*Id.* at p. 31, 190 Cal.Rptr. 721.) The court further held that "his dangerousness must be established by proof beyond a reasonable doubt; and he may not be involuntarily committed on anything less than a unanimous verdict of that jury." (*Id.* at p. 37, 190 Cal.Rptr. 721.) The Legislature promptly responded by amending the extended detention scheme to provide for proof beyond a reasonable doubt and a unanimous verdict. (Assem. Com. on Crim. Law and Public Safety, analysis of Assem. Bill No. 2760 (1983-1984 Reg. Sess.) as introduced Feb. 7, 1984, p. 1 ["The purpose of the bill is to codify judicially mandated due process safeguards in the statute to insure that extension proceedings are conducted properly. (See *People v. Superior Court (Vernal D.)* 142 Cal.App.3d 29, [190 Cal.Rptr. 721].) ... This is a rather rare proceeding and it can't be assumed most prosecutors are familiar with it. Therefore, it is important to correct the statutes which currently inaccurately reflect what procedural safeguards are necessary"]; Sen. Com. on Judiciary, analysis of Assem. Bill No. 2760 (1983-1984 Reg. Sess.) as introduced Feb. 7, 1984, pp. 1-2 ["The statute now requires that three-fourths of the members of the jury agree by a preponderance of evidence that the ward is dangerous. An appellate court decision, however, has held that due process and equal protection require a unanimous jury verdict beyond a reasonable doubt. [¶] This bill would codify these procedural requirements.... [¶] The purpose of this bill is to conform statutory and case law"]; see also Assemblyman Rusty Areias, letter to Governor Deukmejian re Assem. Bill No. 2760, July 9, 1984, p. 1 ["AB 2760 incorporates safeguards necessary to meet constitutional requirements, thereby preserving a procedure that is vital to protect the public from dangerous, mentally-unbalanced youthful offenders"].)

We employed a similar approach of construing a civil commitment statute to preserve its constitutionality in *Hofferber, supra*, 28 Cal.3d 161, 167 Cal.Rptr. 854, 616 P.2d 836. In that case, we concluded that "the state may confine incompetent criminal defendants, *on grounds that they remain violently* ****315** dangerous,* when a magistrate or grand jury has found probable cause to believe that they have committed violent felonies." (*Id.* at p. 174, 167 Cal.Rptr. 854, 616 P.2d 836.) We observed, however, that the relevant statutes did "not expressly require a showing of continuing dangerousness," but appeared "to permit indefinite maintenance of [Lanterman-Petris-Short Act] conservatorships solely because the incompetence continues and the ***135** violent felony charges have not ***878** been dismissed." [FN6] (*Hofferber*, at pp. 174-175, 167 Cal.Rptr. 854, 616 P.2d 836.) Therefore, in order to preserve the constitutionality of the statutory scheme, we construed it to require current dangerousness. (*Id.*

at pp. 175, 176-178, 167 Cal.Rptr. 854, 616 P.2d 836.)

> FN6. The Lanterman-Petris-Short (LPS) Act is a comprehensive civil commitment scheme "designed to address a variety of circumstances in which a member of the general population may need to be evaluated or treated for different lengths of time. (§ 5150 [short-term emergency evaluation]; § 5250 [intensive 14-day treatment]; § 5300 [180-day commitment for the imminently dangerous]; § 5260 [extended commitment for the suicidal]; § 5350 [30-day temporary conservatorship or one-year conservatorship for the gravely disabled].) ... [¶] A stated purpose of the LPS Act is to provide 'prompt evaluation and treatment of persons [from the general population] with serious mental disorders.' (§ 5001, subd. (b).) ... To achieve this purpose, a number of LPS Act provisions allow a person to be removed from the general population in order to be civilly committed based on a probable cause determination made by a mental health or law enforcement professional, and then to challenge the civil commitment within a reasonable time afterwards." (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253-254, 127 Cal.Rptr.2d 177, 57 P.3d 654.)

We noted, "Clearly the Legislature's focus on violent felony charges reflects a concern as to dangerousness in criminal incompetency cases...." (*Hofferber, supra*, 28 Cal.3d at p. 175, 167 Cal.Rptr. 854, 616 P.2d 836.) Moreover, while there were "several 'danger' definitions appearing in California statutes" regarding involuntary commitment, we concluded that "[t]he distinctions among those definitions appear more form than substance," and chose as most closely analogous the definition of danger found in the "criminal insanity provisions." (*Id.* at p. 176, 167 Cal.Rptr. 854, 616 P.2d 836.) We therefore held "that every judgment creating or renewing a conservatorship for an incompetent criminal defendant ... must reflect written findings that, by reason of a mental disease, defect, or disorder, the person represents a substantial danger of physical harm to others," and upheld the relevant statutory scheme as so construed. (*Id.* at pp. 176-177, 167 Cal.Rptr. 854, 616 P.2d 836.) However, because Hofferber had apparently not had a hearing at which his current dangerousness was so demonstrated, we reversed the conservatorship order entered below. (*Id.* at p. 178, 167 Cal.Rptr. 854, 616 P.2d 836.)

[4] Thus, as we have done before, we can preserve the constitutionality of the extended detention scheme by simply interpreting the scheme to require not only that a person is "physically dangerous to the public because of his or her mental ... deficiency, disorder, or abnormality," but also that the mental deficiency, disorder, or abnormality causes him to have serious difficulty controlling his dangerous behavior. This aspect of the person's condition must be alleged in the petition for extended commitment (§ 1800), and demonstrated at the probable cause hearing (§ 1801) and any ensuing trial (§ 1801.5).

In so doing, we do not impinge on a role properly reserved to the Legislature. We are cognizant of the fact that the definition of mental illness ***136** warranting involuntary civil confinement is primarily a legislative task. (*Williams, supra*, 31 Cal.4th at p. 774, 3 Cal.Rptr.3d 684, 74 P.3d 779 ["the premise of both *Hendricks, supra*, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501, and *Kansas v. Crane, supra*, 534 U.S. 407, 122 S.Ct. 867, 151 L.Ed.2d 856, [is] that, in this nuanced area, the *Legislature* is the primary arbiter of how the necessary mental-disorder component of its civil commitment scheme shall be defined and described"].) For that reason, we have not found persuasive the Attorney General's argument we read into the extended detention *****879** scheme "definitions for a mental disorder found in analogous MDO and/or SVPA civil commitment schemes." (See *ante*, at pp. 8-9.) Rather than define such conditions, which we are ill-equipped to do, we simply conclude that however the Legislature ****316** does or does not choose to define "mental ... deficiency, disorder, or abnormality," due process principles require that the state demonstrate that the "mental ... deficiency, disorder, or abnormality" causes the person to have serious difficulty controlling his dangerous behavior.

Defendant contends we are precluded from reading a volitional requirement into the statute, because in 1998 the Legislature amended the extended detention scheme to add a definition of mental illness similar to that in the SVPA, and then deleted this language before the bill was enacted. (Compare Sen. Amend. to Sen. Bill No. 2187 (1997-1998 Reg. Sess.) Apr. 13, 1998 [adding definition similar to the SVPA]

[FN7] with Sen. Amend. to Sen. Bill No. 2187 (1997-1998 Reg. Sess.) Apr. 28, 1998 [deleting definition].) One committee report noted that the proposed definition "appears to be ... broader than the comparable statute applicable to adults," which the report identified as the MDO definition, "and arguably may overreach in its scope." (Sen. Com. on Pub. Safety, analysis of Sen. Bill No. 2187 (1997-1998 Reg. Sess.) as amended Apr. 13, 1998, p. 8.)

> FN7. The proposed definition provided: "As used in this section and in Section 1801.5, 'mental deficiency, disorder, or abnormality' includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal acts in a degree constituting a danger to the health and safety of others." (Sen. Amend. to Sen. Bill No. 2187 (1997-1998 Reg. Sess.) Apr. 13, 1998.)

The primary purpose of the 1998 amendment was not to define "mental deficiency, disorder, or abnormality," but to clarify that prosecutors were not required under the extended detention scheme to perform two trials with the standard of proof for both beyond a reasonable doubt. (Sen. Subcom. on Juvenile Justice, analysis of Sen. Bill No. 2187 (1997-1998 Reg. Sess.) as amended Apr. 13, 1998, pp. 3-5, 7; *id.* at p. 7 ["This bill largely would clarify the judicial proceedings associated with 1800 procedures. To the extent current case law can be interpreted to require both a court trial using a standard of proof beyond a reasonable doubt and then an additional jury trial with the same standard of proof, this bill would correct that problem. [¶] It also would set forth the initial probable cause hearing for the petition, and a ***137** definition of 'mental deficiency, disorder, or abnormality' "].) Indeed, as can been seen, the definition of "mental deficiency, disorder, or abnormality" was a legislative topic for only a brief period during the bill's five-month legislative journey.

Nor can we know why the definition was added and then removed. *(Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 573, fn. 5, 21 Cal.Rptr.3d 331, 101 P.3d 140 [" 'Unpassed bills, as evidence[ ] of legislative intent, have little value' "].) There is some indication certain legislators may have preferred the MDO definition be used instead. However, it might also be that neither the SVPA nor the MDO standards (see *ante,* at pp. 8-9), which derive from statutory schemes designed to target particular groups of individuals, readily work in the context of the more generally applicable extended detention scheme. Thus, the 1998 addition and then deletion of a definition of "mental deficiency, disorder, or abnormality" does not preclude us from construing the current extended detention scheme to include an impaired volitional capacity requirement. It simply means that while primarily addressing a completely different and unrelated issue, *****880** the Legislature rejected a definition based on the SVPA for unknown reasons.

[5] We next consider whether, despite the absence of a jury instruction addressing the need for the People to demonstrate defendant's serious difficulty in controlling his dangerous behavior, the jury nevertheless necessarily made such a finding. (See *People v. Roberge* (2003) 29 Cal.4th 979, 989, 129 Cal.Rptr.2d 861, 62 P.3d 97 [trial court must instruct on the meaning of "likely" in definition of sexually violent predator "even without a request by any party"].) Here, defendant does not contend he does not suffer from a "mental ... abnormality" within the meaning of the extended detention scheme. He merely contends that unlike *Williams,* on which the Attorney General relies, the evidence here was not such that "no rational ****317** jury could have failed to find [defendant] harbored a mental disorder that made it seriously difficult for him to control his violent ... impulses .... [making] the absence of a 'control' instruction ... harmless beyond a reasonable doubt." *(Williams, supra,* 31 Cal.4th at p. 760, 3 Cal.Rptr.3d 684, 74 P.3d 779.) We agree.

In *Williams,* the defendant had to be physically restrained from continuing the rape of one of his victims, even after the crime was interrupted by police. *(Williams, supra,* 31 Cal.4th at p. 760, 3 Cal.Rptr.3d 684, 74 P.3d 779.) Two experts testified he suffered from a largely uncontrollable obsessive drive to rape. *(Id.* at pp. 761-762, 3 Cal.Rptr.3d 684, 74 P.3d 779.) One expert contrasted this with "a rape committed as a crime of opportunity, as where a burglar enters a home to steal property, but by happenstance encounters a victim." *(Id.* at p. 761, fn. 2, 3 Cal.Rptr.3d 684, 74 P.3d 779.) He also recounted the defendant's statement regarding his sexual pathology that he felt " 'like a fish on a hook and I don't have control.' " *(Id.* at p. 761, 3 Cal.Rptr.3d

684, 74 P.3d 779.) The other expert noted the ***138** defendant had " 'very poor control over his impulses.' " (*Id.* at p. 762, 3 Cal.Rptr.3d 684, 74 P.3d 779.) Moreover, while incarcerated, the defendant "openly masturbated in the prison library and exposed himself in groups where females were present." (*Id.* at p. 761, 3 Cal.Rptr.3d 684, 74 P.3d 779.) Based on this "essentially undisputed" evidence "that [the] defendant's diagnosed mental disorder involved serious difficulty in controlling sexual behavior," we concluded, "the absence of an instruction pinpointing that issue must 'beyond a reasonable doubt ... have made no difference in reaching the verdict obtained.' " (*Id.* at p. 778, 3 Cal.Rptr.3d 684, 74 P.3d 779.)

Here, Dr. Morris did testify that defendant was dangerous, i.e., that defendant's "recent behaviors of exposing himself along with the self-report of violent rape fantasies suggest[ ] that [defendant], due to an untreated sexual disorder, continues to present an imminent danger to his community." There was, however, no testimony that defendant's mental abnormality caused him serious difficulty controlling his sexually deviant behavior. Whereas in *Williams* there was expert testimony that paraphilia not otherwise specified, the mental abnormality with which defendant was diagnosed, was "a mental disorder characterized by intense and recurrent fantasies, urges, and behaviors about sex with nonconsenting persons, which symptoms persist for six months or more and cause significant dysfunction or personal distress," no such information was relayed to the jury here. (*Williams, supra*, 31 Cal.4th at p. 761, 3 Cal.Rptr.3d 684, 74 P.3d 779.) Moreover, defendant's committing offense, unlike those in *Williams*, was one of opportunity; his mother was babysitting the sleeping victim. (See *****881***Williams*, at p. 761, fn. 2, 3 Cal.Rptr.3d 684, 74 P.3d 779.) In addition, his incidents of masturbation occurred in his room, not in a public setting such as a library, as in *Williams*. Although defendant undoubtedly intended his behavior to be provocative and disturbing, he discontinued visibly masturbating as soon as he was sure the female officers observed him. Thus, the evidence was not such that "no rational jury could have failed to find [defendant] harbored a mental disorder that made it seriously difficult for him to control his violent ... impulses .... [making] the absence of a 'control' instruction ... harmless beyond a reasonable doubt." (*Williams*, at p. 760, 3 Cal.Rptr.3d 684, 74 P.3d 779.) We therefore conclude that to the extent defendant does not prevail on any remaining claims in the Court of Appeal on remand, he is entitled to a new petition, probable cause hearing, and if necessary, trial, under the correct due process standard. [FN8]

FN8. Defendant also contends the extended detention scheme is in fact a penal, not a civil, commitment scheme, and hence "its constitutionality should not be judged by the constitutional standards applied to civil commitments but by more rigorous standards of substantive due process." He further contends the extended detention scheme violates equal protection. Defendant did not raise these issues in an answer to the petition for review. Hence they are not before us. (Cal. Rules of Court, rule 29.1(b)(2), (3).)

****318 *139** III. DISPOSITION

The judgment of the Court of Appeal is reversed, and the case remanded to that court for further proceedings consistent with this opinion.

WE CONCUR: GEORGE, C.J., KENNARD, BAXTER, WERDEGAR, CHIN, and MORENO, JJ.

35 Cal.4th 117, 106 P.3d 305, 24 Cal.Rptr.3d 866, 05 Cal. Daily Op. Serv. 1620, 2005 Daily Journal D.A.R. 2209

Briefs and Other Related Documents **(Back to top)**

• 2004 WL 2863067 (Appellate Brief) Protection and Advocacy, Inc. Application for Leave to File Brief of Amicus Curiae and Brief of Amicus Curiae in Support of Defendant/Petitioner (Oct. 12, 2004)Original Image of this Document (PDF)

• 2004 WL 2863066 (Appellate Brief) Reply Brief on the Merits (Sep. 27, 2004)Original Image of this Document (PDF)

• S123722 (Docket) (Mar. 29, 2004)

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Court of Appeal, Second District, Division 4, California.
The PEOPLE, Petitioner,
v.
The SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent,
VERNAL D., Jr., a Minor, Real Party in Interest.
Civ. 67975.

April 20, 1983.
Rehearing Denied May 11, 1983.
Hearing denied July 27, 1983.

State filed petition for writ of mandate seeking annulment of order dismissing application to extend time of youth authority control over juvenile. The Court of Appeal, Woods, P.J., held that: (1) juvenile was not entitled to dismissal of application on ground that it was not timely filed, and (2) in extended commitment hearing, to be held under terms of writ which would be issued, juvenile could be found dangerous to public and subject to involuntary confinement only on basis of verdict by unanimous jury.

Writ issued.

West Headnotes

[1] Infants 230.1
211k230.1 Most Cited Cases
(Formerly 211k230)
Extended detention of juvenile was not in violation of case holding that a youthful offender may not be committed to the youth authority for any period of time longer than that for which an adult counterpart would have been sentenced to jail or prison for the same offense, in that case limits only period of initial detention which may be served by youthful offender, with no effect on potential duration of extended commitments on finding that because of mental deficiency or abnormality youth is physically dangerous to the public.

[2] Infants 230.1
211k230.1 Most Cited Cases
(Formerly 211k230)
Juvenile was not entitled to dismissal of application to extend time of youth authority control over juvenile on ground that it was not filed in superior court at least 90 days prior to date on which juvenile was scheduled for release from commitment. West's Ann.Cal.Welf. & Inst.Code § 1800.

[3] Infants 230.1
211k230.1 Most Cited Cases
(Formerly 211k230)
At extended commitment hearing, to be held under terms of writ which would be issued by a Court of Appeal, juvenile could be found dangerous to public and subject to involuntary confinement only on basis of a verdict by unanimous jury.

****721 *31** Robert H. Philibosian, Dist. Atty., Donald J. Kaplan and Dirk L. Hudson, Deputy Dist. Attys., Los Angeles, for petitioner.

Lloyd Jeffrey Wiatt and Richard E. Ross, Los Angeles, for real party in interest.

No appearance for respondent.

WOODS, Presiding Justice.

We are presented with a petition for writ of mandate filed on behalf of the People of the State of California, seeking the annulment of a trial court order dismissing an application to extend the time of Youth Authority control over Vernal D., the real party in interest. We issued a stay of the superior court dismissal, and ordered that Vernal D. not be released from confinement under the California Youth Authority commitment, pending resolution of the within writ petition.

We have concluded that the trial court erroneously dismissed the application to extend Youth Authority control. We accordingly issue a writ of mandate, directing the superior court to conduct a hearing on the People's petition.

In August 1980, Vernal D. was committed to the California Youth Authority for a period of three years, with credit for previous time in confinement. From the time of his commitment until the Fall of 1982, numerous incidents of assaultive behavior were reported concerning Vernal D. In September and October 1982, reports were submitted to the Youthful Offender Parole Board, recommending extended commitment, pursuant to Welfare and Institutions

****722** Code [FN1] section 1800 et seq., on the ground that he was too dangerous for release. [FN2]

FN1. All references in this opinion to code sections shall refer to the Welfare and Institutions Code, unless otherwise stated.

FN2. Section 1800 provides, in part: "Whenever the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority ... would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time...."

***32** On November 18, 1982, the board ordered that Vernal D. be returned to court for extension of jurisdiction, based on his psychotic condition. A petition for extended commitment was filed with the superior court by the District Attorney's Office on January 6, 1983.

At the time of the hearing on the petition, the trial court dismissed the petition, relying on *People v. Olivas* (1976) 17 Cal.3d 236, 131 Cal.Rptr. 55, 551 P.2d 375. The court concluded that Vernal D., on March 5, 1983, would have been confined to the California Youth Authority for the maximum period for which an adult could have been sentenced to prison. Therefore, the court concluded that it had no jurisdiction to authorize commitment beyond March 5.

I

[1] We address first petitioner's contention that the trial court improperly found extended detention to be in violation of *People v. Olivas, supra*, 17 Cal.3d 236, 131 Cal.Rptr. 55, 551 P.2d 375. Petitioner correctly asserts that there is no merit to the trial court's concern that *People v. Olivas, supra*, prohibited the extended commitment of dangerous persons. The court in *Olivas* held that a youthful offender may not be committed to the Youth Authority for any period of time longer than that for which an adult counterpart would have been sentenced to jail or prison for the same offense. That holding, affecting commitments in criminal proceedings, is of no consequence in extended involuntary commitment proceedings, instituted to provide additional treatment to dangerous persons.

In *In re Gary W.* (1971) 5 Cal.3d 296, 301, 96 Cal.Rptr. 1, 486 P.2d 1201, the Supreme Court considered the constitutionality of procedures in section 1800 et seq., and observed: " 'The issue is whether the statutory scheme here challenged (a) "imprisons" petitioner "as a criminal," or (b) constitutes "compulsory treatment" of petitioner as a sick person requiring "periods of involuntary confinement." ' [Citation.] The question is easily resolved, for the Legislature has been at pains to assure that confinement pursuant to sections 1800-1803 shall be only for the purpose of treatment." (See also *People v. Smith* (1971) 5 Cal.3d 313, 96 Cal.Rptr. 13, 486 P.2d 1213.)

The Supreme Court in *Gary W.* discussed the "demonstrably civil purpose of sections 1800-1803," (5 Cal.3d at p. 302, 96 Cal.Rptr. 1, 486 P.2d 1201) and concluded that commitment beyond the petitioner's normal release date, because of a finding of danger to society, violated neither due process nor equal protection, so long as the petitioner was provided with a right to trial by jury.

The trial court apparently believed that *Olivas*, rendered some years after the Supreme Court's decision in *Gary W.*, invalidated its conclusions. That it did not do so is evident from numerous recent California Supreme Court decisions ***33** citing with approval both the extended commitment proceeding in section 1800 and the holding in *In re Gary W.*

In *In re Moye* (1978) 22 Cal.3d 457, 149 Cal.Rptr. 491, 584 P.2d 1097, the Supreme Court established acceptable procedures for institutional confinement of persons committed to the Department of Health following their acquittal of criminal charges due to insanity. The court enumerated other approved involuntary proceedings as follows: "In addition to the present MDSO procedure, we further note a general and growing legislative pattern to preclude or minimize the risk of an indefinite commitment to state institutions by requiring periodic ****723** review and recommitment hearings in which the burden of proving the dangerousness of the committee's condition is placed on the state. (See Welf. & Inst.Code, § § 1800 [two-year extended commitment for Youth Authority wards deemed dangerous at the

time of discharge], 3201 [three-year extended commitment for narcotics addicts not cured after seven-year initial commitment], 5304 [LPS act commitment of dangerous persons limited to ninety days, unless new threats or harm occur], 5361 [one-year commitment of gravely disabled persons, unless new petition for conservatorship filed], 6500.1 [one-year commitment for mentally retarded persons unless recommitment justified], 6514 [one-year commitment for developmentally disabled persons, unless recommitment justified].)" (*Id.*, at p. 465, 149 Cal.Rptr. 491, 584 P.2d 1097.)

Similarly, in *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 172, 167 Cal.Rptr. 854, 616 P.2d 836, the Supreme Court compared and contrasted the legislative schemes for the continued confinement of dangerous persons, observing: "Variation of the length and conditions of confinement, depending on degrees of danger reasonably perceived as to special classes of persons, is a valid exercise of state power. [¶] .... [¶] The California scheme permits long-term, renewable commitments of persons found not guilty by reason of insanity (Pen.Code, § 1026 et seq.), mentally disordered sex offenders (MDSO's) (§ 6300 et seq.), and those committed to the Youth Authority (§ 1800 et seq.; *People v. Smith* (1971) 5 Cal.3d 313, 317 [96 Cal.Rptr. 13, 486 P.2d 1213] ...)--in each case on proof that they remain dangerously disturbed."

People v. Olivas, supra, 17 Cal.3d 236, 131 Cal.Rptr. 55, 551 P.2d 375, limits only the period of initial detention which may be served by a youthful offender. It does not limit or otherwise affect the potential duration of extended commitments on a finding that because of mental deficiency or abnormality the youth is physically dangerous to the public.

II

[2] Vernal D. contends that even if *Olivas* did not authorize dismissal of the within application, it should have been dismissed, inasmuch as it was not timely ***34** filed. Section 1800 provides that the "application shall be filed at least 90 days before the time of discharge otherwise required." Vernal D. argues that although the 90-day provision of section 1800 is not jurisdictional (citing *People v. Echols* (1982) 138 Cal.App.3d 838, 188 Cal.Rptr. 328), nonetheless the petition should be dismissed unless the prosecution can show justification for failure to comply with the statutory time limit.

The following chronology led to the filing of the instant petition: On August 11, 1980, Vernal D. was committed to the California Youth Authority for the period of three years (less credit of 159 days). From the time of his commitment until September 1982, numerous incidents of assaultive behavior were committed.

On September 28, 1982, the program administrator of the intensive treatment program in which Vernal D. was participating recommended that he be returned to court for extended detention pursuant to section 1800.

On November 18, 1982, the Youthful Offender Parole Board ordered that Vernal D. be returned to court for extension of jurisdiction, based on his psychotic condition.

On December 14, 1982, staff counsel for the Youthful Offender Parole Board filed his evaluation and report, recommending extended commitment. On December 17, a letter was sent from the board to the district attorney requesting that a petition for extended detention be filed. The petition was filed with the superior court by the District Attorney's Office on January 6, 1983.

Vernal D. argues that inasmuch as he was scheduled for release from commitment on March 5, 1983 (the completion of his three-year commitment term), the petition was not filed in the superior court at least 90 days prior to that date. Therefore, it is argued, the application should have been dismissed by the superior court.

****724** An identical contention was resolved to the contrary in *In re Cavanaugh* (1965) 234 Cal.App.2d 316, 319, 44 Cal.Rptr. 422: "Appellant argues that this failure to comply with the 90-day requirement of section 1800 divested the court of jurisdiction. He urges that the 90-day period established by statute operates in the same fashion as a statute of limitations in criminal cases, where the running of the statute against a charged offense operates to deprive the court of jurisdiction. [Citation.] This is not correct. Appellant was originally committed to the Youth Authority by the juvenile court. All proceedings leading up to the order here challenged took place in that court. Such proceedings are civil in nature,

designed to 'serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the State; ...' [Citations.] Section 1800 ***35** vests jurisdiction in the committing court to hear and determine petitions filed thereunder. Although the petition was not timely filed, this error did not deprive the court of jurisdiction. The statute does not purport to restrict the court's power to act where the petition is not filed within the stated period of 90 days, nor is any penalty attached for noncompliance. Thus the court had jurisdiction and authority to issue its order, despite respondent's failure to file the petition within the stated time."

We agree with the conclusion of the *Cavanaugh* court. Nor are we persuaded that any different result is compelled by *People v. Echols, supra,* 138 Cal.App.3d 838, 188 Cal.Rptr. 328. The *Echols* court held that the time limit requirements of section 1026.5 are not jurisdictional. However, the court concluded that considerations of due process required an inquiry into whether the defendant was harmed by the late filing. The court likened the problem to that presented by speedy trial violations and concluded that the proper test involved the balancing of the prejudicial effect of the delay against the justification for the delay. (*People v. Echols, supra,* at p. 842, 188 Cal.Rptr. 328.) The court there found the justification adequate and the prejudice nonexistent and thus affirmed the commitment order.

Here, Vernal D. argues that no justification for the delay having been demonstrated, the petition cannot be entertained. Even accepting the argument that *Echols* (involving a different code section) imposes a due process analysis on a late filing under section 1800, we do not agree with the conclusion reached by Vernal D.

The record reflects that the December 18, 1982 letter from the Youthful Offender Parole Board to the District Attorney's Office, requesting the filing of a petition, enclosed with it reports in support of the petition. Two reports, dated December 14, elaborated on Vernal D.'s history of assaultive behavior and detailed the many psychological and psychiatric reports prepared in connection with his conduct and treatment. To be timely, the superior court petition should have been filed by December 5, 1982. The order of the Youthful Offender Parole Board, requiring a petition, was not issued until November 18. We do not believe that the expenditure of approximately four weeks for documentation of the need for extended commitment is unreasonable. Additionally, the record reflects no prejudice to Vernal D. by virtue of the late filing. Therefore, the court had jurisdiction to entertain the petition for extended commitment.

III

[3] Finally, Vernal D. contends that the statute is unconstitutional, in that it authorizes extended commitment based on a less than unanimous jury verdict. We agree with Vernal D. that a commitment based on a verdict by only three-fourths of the members of the jury does not comport with either due process or ***36** equal protection. Therefore, at the extended commitment hearing, to be held under the terms of the writ which we hereby issue, Vernal D. may be found dangerous to the public and subject to involuntary confinement only on the basis of a verdict by a unanimous jury.

This conclusion is mandated under the principles of equal protection. Numerous ****725** circumstances exist in California law under which a person may be involuntarily committed. As to each, a statutory and judicial scheme has been created to assure that the commitment comports with due process. With respect to trial by jury, no involuntary commitment procedure remains on the books allowing a less than unanimous jury verdict except for the extended commitment of dangerous youthful offenders under section 1800. As to mentally disordered sex offenders, sections 6318 and 6321 originally authorized a verdict by three-fourths of the jury; in *People v. Feagley* (1975) 14 Cal.3d 338, 121 Cal.Rptr. 509, 535 P.2d 373, the California Supreme Court mandated a unanimous verdict. Section 6509 was silent on the number of jurors required to confine mentally retarded dangerous persons. In *In re Hop* (1981) 29 Cal.3d 82, 171 Cal.Rptr. 721, 623 P.2d 282, the Supreme Court declared that nothing less than a unanimous verdict would comport with due process. Likewise, section 3108 authorized involuntary commitment of narcotics addicts by three-quarters of the jury. In *People v. Thomas* (1977) 19 Cal.3d 630, 139 Cal.Rptr. 594, 566 P.2d 228, the Supreme Court declared that due process and equal protection mandated a unanimous verdict. Sections 5302 and 5303 require a verdict by a unanimous jury in order to authorize the involuntary commitment of imminently dangerous persons, or those who are gravely disabled, suicidal, or inebriate.

Unquestionably, equal protection compels a unanimous verdict for the involuntary commitment of youthful offenders as well. No distinctions are evident which would justify disparate treatment of youthful offenders, committed to the California Youth Authority, who are denied release based on a finding that they are dangerous to themselves or others. Both equal protection and due process obviously compel the requirement of a unanimous jury verdict. The courts have soundly rejected arguments that these proceedings are civil in nature and therefore entitled to different treatment. The consequence of the proceeding, involuntary incarceration, triggers the full panoply of due process protections. [FN3]

> FN3. Although Vernal D. does not discuss the standard of proof which should be applied in these proceedings, for the guidance of the trial court we explain that in order to comply with the requirements of the due process clauses of the California and federal Constitutions, extended detention under section 1800 must be justified by proof beyond a reasonable doubt. Section 1801.5 implies, in providing that "[t]he trial shall be had as provided by law for the trial of civil cases," that proof by a preponderance of the evidence is satisfactory. It is now well established in California that so drastic an impairment of liberty as is suffered by involuntary commitment may not be supported on any lesser standard than proof beyond a reasonable doubt. (*People v. Feagley, supra*, 14 Cal.3d 338, 345, 121 Cal.Rptr. 509, 535 P.2d 373; *People v. Burnick* (1975) 14 Cal.3d 306, 310, 121 Cal.Rptr. 488, 535 P.2d 352.)

***37** Since the decision in *Gary W.*, the Supreme Court has held that both mentally disordered sex offenders (*People v. Feagley, supra*, 14 Cal.3d 338, 121 Cal.Rptr. 509, 535 P.2d 373), and narcotics addicts (*People v. Thomas, supra*, 19 Cal.3d 630, 139 Cal.Rptr. 594, 566 P.2d 228), are entitled to a unanimous verdict prior to involuntary commitment. Similarly, if for no other reason than that the Supreme Court has previously determined that no constitutional distinction exists among those committees, dangerous youthful offenders are entitled to the same constitutional protections.

Let a peremptory writ of mandate issue directing the trial court to conduct a hearing on petitioner's application to extend Youth Authority control over Vernal D.; unless waived, Vernal D. is entitled to a trial by jury on the issue of dangerousness; his dangerousness must be established by proof beyond a reasonable doubt; and he may not be involuntarily committed on anything less than a unanimous verdict of that jury.

KINGSLEY and McCLOSKY, JJ., concur.

142 Cal.App.3d 29, 190 Cal.Rptr. 721

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15 Cal.4th 232, 933 P.2d 507, 62 Cal.Rptr.2d 243, 32 UCC Rep.Serv.2d 534, 97 Cal. Daily Op. Serv. 2554, 97 Daily Journal D.A.R. 4507
(Cite as: 15 Cal.4th 232)

Supreme Court of California
WESTERN SECURITY BANK, N.A., Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;
BEVERLY HILLS BUSINESS BANK et al., Real Parties in Interest. VISTA PLACE ASSOCIATES et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; WESTERN SECURITY BANK,
N.A., et al., Real Parties in Interest.
No. S037504.

Apr 7, 1997.

SUMMARY

After a partnership went into default on a loan it had obtained from a bank, the bank and the partnership modified the terms of the loan, and the general partners obtained unconditional, irrevocable standby letters of credit in favor of the bank as additional collateral. When the partnership again went into default, the bank foreclosed nonjudicially on the real property securing the loan and then presented the letters of credit to the issuer so as to cover the unpaid deficiency. The issuer brought an action for declaratory relief, seeking a declaration that it was not obligated to accept or honor the bank's tender of the letters of credit or, alternatively, a declaration that, if it was required to honor the letters, the partners were obligated to reimburse the issuer. The trial court entered a judgment decreeing that the issuer was required to honor the letters of credit and that the issuer was not barred from severally seeking reimbursement from the partners. (Superior Court of Los Angeles County, No. BC031239, Ernest George Williams, Judge.) The Court of Appeal, Second Dist., Div. Three, No. B066488, reversed, concluding that, under Code Civ. Proc., § 580d, part of the antideficiency law, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, may decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's nonjudicial foreclosure on real property. Thereafter, the Legislature enacted urgency legislation (Sen. Bill No. 1612), providing that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw (Code Civ. Proc., § 580.5). After the Supreme Court granted review and returned the matter to the Court of Appeal for reconsideration in light of the urgency legislation, the Court of Appeal concluded the legislation constituted a substantial change in existing law and thus was prospective only and had no impact on the Court of Appeal's earlier conclusions regarding the parties' rights and obligations. ***233**

The Supreme Court reversed the judgment of the Court of Appeal and remanded. The court held that the Court of Appeal erred in concluding that the enactment of Sen. Bill No. 1612 had no effect on this case. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision to clarify the parties' obligations when letters of credit support loans also secured by real property. The Court of Appeal mistook standby letters of credit for an attempt to evade the antideficiency and foreclosure laws by seeing them only as a form of guaranty, and also overlooked that the parties specifically intended the standby letters of credit to be additional security. When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory prohibition of deficiency judgments. Further, the Legislature manifestly intended the respective obligations of the parties to a letter of credit transaction to remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Sen. Bill No. 1612. Since the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision, rather than a change in the law, the legislation had no impermissible retroactive consequences, and it governed this case. (Opinion by Chin, J., with George, C. J., Baxter, and Brown, JJ., concurring. Concurring and dissenting opinion by Werdegar, J. Concurring and dissenting opinion by Mosk, J., with Kennard, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Letters of Credit § 10--Duties and Privileges of Issuer--Letters Presented to Cover Deficiency--Following Nonjudicial Foreclosure--Retroactivity of New Legislation.

In an action brought by the issuer of letters of credit against a bank that had loaned money to a partnership secured by real property, and against the partnership and its general partners, the Court of Appeal erred in concluding that the Legislature's postjudgment

enactment of urgency legislation (Sen. Bill No. 1612), providing that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw (Code Civ. Proc., § 580.5), had no effect on a prior Court of Appeal holding in this case to the effect that, under Code Civ. Proc., § 580d, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, may decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's nonjudicial foreclosure on real property. The partners obtained the letters ***234** of credit as additional collateral for repayment of the loan and presented the letters for payment to the issuer after the bank foreclosed nonjudicially on the real property. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision to clarify the parties' obligations when letters of credit support loans also secured by real property. The Court of Appeal mistook standby letters of credit for an attempt to evade the antideficiency and foreclosure laws by seeing them only as a form of guaranty, and also overlooked that the parties specifically intended the standby letters of credit to be additional security. When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory prohibition of deficiency judgments. Further, the Legislature manifestly intended the respective obligations of the parties to a letter of credit transaction to remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Sen. Bill No. 1612. Since the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision, rather than a change in the law, the legislation had no impermissible retroactive consequences, and it governed this case.

[See 3 Witkin, Summary of Cal. Law (9th ed. 1987) Negotiable Instruments, § 11.]

(2) Statutes § 5--Operation and Effect--Retroactivity.

Statutes do not operate retrospectively unless the Legislature plainly intended them to do so. A statute has retrospective effect when it substantially changes the legal consequences of past events. A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. When the Legislature clearly intends a statute to operate retrospectively, the courts are obliged to carry out that intent unless due process considerations prevent them from doing so.

(3) Statutes § 5--Operation and Effect--Retroactivity--Amendments-- Purpose--Change in Law or Clarification.

A statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. The courts assume that the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. The courts' consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. Such a legislative act has no retrospective effect because the true meaning of the statute remains the ***235** same. One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation. An amendment that in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute. In such a case, the amendment may logically be regarded as a legislative interpretation of the original act-a formal change-rebutting the presumption of substantial change. Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power that the Constitution assigns to the courts.

(4) Statutes § 5--Operation and Effect--Retroactivity--Legislative Intent-- Change in Law or Clarification.

A subsequent expression of the Legislature as to the intent of a prior statute, although not binding on the court, may properly be used in determining the effect of a prior act. Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a clarification, the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question for the legislative body enacting the statute. Thus, where a statute provides that it clarifies or declares existing law, such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In

accordance with the general rules of statutory construction, the court must give effect to this intention unless there is some constitutional objection to it.

(5) Letters of Credit § 10--Duties and Privileges of Issuer--Independence Principle.
The liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. Under the independence principle, a letter of credit is an independent obligation of the issuing bank rather than a form of guaranty or a surety obligation (Cal. U. Com. Code, § 5114, subd. (1)). Thus, the issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. Absent fraud, the issuer must pay upon proper presentment, regardless of any defenses the customer may have against the beneficiary based in the underlying transaction.

(6) Letters of Credit § 10--Duties and Privileges of Issuer--Independence Principle--Effect of Draw on Letter of Credit.
A standby ***236** letter of credit is a security device created at the request of the customer/debtor that is an obligation owed independently by the issuing bank to the beneficiary/creditor. A creditor that draws on a letter of credit does no more than call on all of the security pledged for the debt. When it does so, it does not violate the prohibition of deficiency judgments.

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CHIN, J.

This case concerns the extent to which two disparate bodies of law interact when standby letters of credit are used as additional support for ***237** loan obligations secured by real property. On one side we have California's complex web of foreclosure and antideficiency laws that circumscribe enforcement of obligations secured by interests in real property. On the other side is the letter of credit law's "independence principle," the unique characteristic of letters of credit essential to their commercial utility.

The antideficiency statute invoked in this case is Code of Civil Procedure section 580d. That section precludes a judgment for any loan balance left unpaid after the lender's nonjudicial foreclosure under a power of sale in a deed of trust or mortgage on real property. (See *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35, 43-44 [27 Cal.Rptr. 873, 378 P.2d 97].) [FN1] The independence principle, in summary form, makes the letter of credit issuer's obligation to pay a draw conforming to the letter's terms completely separate from, and not contingent on, any underlying contract between the issuer's customer and the letter's beneficiary. (See, e.g., Cal. U. Com. Code, § 5114, subd. (1); *San Diego Gas & Electric Co. v. Bank Leumi* (1996) 42 Cal.App.4th 928, 933-934 [50 Cal.Rptr.2d 20].) [FN2]

FN1 In pertinent part, Code of Civil Procedure section 580d provides: "No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property or an

estate for years therein hereafter executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust."

FN2 In 1996, the Legislature completely revised division 5 of the California Uniform Commercial Code, which pertains to letters of credit. (Stats. 1996, ch. 176.) The enactment of chapter 176 repealed the former division 5 and added a new division 5. (Stats. 1996, ch. 176, § § 6, 7.) The new provisions apply to letters of credit issued after the statute's effective date. (Stats. 1996, ch. 176, § 14.) Letters of credit issued earlier are to be dealt with as though the repeal had not occurred. (Stats. 1996, ch. 176, § 15.) We have no occasion in this case to consider the provisions of the new division 5.
The Legislature (Stats. 1996, ch. 497, § 7) later amended a statutory reference found in California Uniform Commercial Code section 5114 as it existed before chapter 176 was enacted. This second legislative action might appear to restore the prior section 5114 from the repealed former division 5 and possibly leave two sections numbered 5114 in the new division 5. (See Cal. Const., art. IV, § 9; Gov. Code, § 9605.) We have no occasion in this case to address the meaning or effect of this seeming incongruity either.
All references to section 5114 in this opinion are to California Uniform Commercial Code section 5114 as it existed before the 1996 legislation.

The Court of Appeal perceived a conflict between the public policies behind Code of Civil Procedure section 580d and the independence principle under the facts of this case. Here, after nonjudicial foreclosure of the real property security for its loan left a deficiency, the lender attempted to draw on the standby letters of credit of which it was the beneficiary. Ordinarily, the issuer's payment on a letter of credit would require the borrower to reimburse the issuer. (See § 5114, subd. (3).) The Court of Appeal considered that this result indirectly imposed on the borrower the equivalent of a ***238** prohibited deficiency judgment. The court concluded the situation amounted to a "fraud in the transaction" under section 5114, subdivision (2)(b), one of the limited circumstances justifying an issuer's refusal to honor its letter of credit.

The Legislature soon acted to express a clear, contrary intent. It passed Senate Bill No. 1612 (1993-1994 Reg. Sess.) (hereafter Senate Bill No. 1612) as an urgency measure specifically meant to abrogate the Court of Appeal's holding. (Stats. 1994, ch. 611, § § 5, 6.) In brief, the aspects of Senate Bill No. 1612 we address provided that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw. After the Legislature's action, we returned the case to the Court of Appeal for reconsideration in light of the statutory changes. On considering the point, the Court of Appeal concluded the Legislature's action was prospective only and had no impact on the court's earlier analysis of the parties' rights and obligations. Accordingly, the Court of Appeal reiterated its former conclusions.

We again granted review and now reverse. The Legislature's manifest intent was that Senate Bill No. 1612's provisions, with one exception not involved here, would apply to all existing loans secured by real property and supported by outstanding letters of credit. We conclude the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision. The legislation therefore has no impermissible retroactive consequences, and we must give it the effect the Legislature intended.

I. Factual and Procedural Background

On October 10, 1984, Beverly Hills Savings and Loan Association, later known as Beverly Hills Business Bank (the Bank), loaned $3,250,000 to Vista Place Associates (Vista), a limited partnership, to finance the purchase of real property improved with a shopping center. Vista's general partners, Phillip F. Kennedy, Jr., John R. Bradley, and Peter M. Hillman (the Vista partners), each signed the promissory note. The loan transaction created a "purchase money mortgage," as it was secured by a "Deed of Trust and Assignment of Rents" as well as a letter of credit.

Vista later experienced financial difficulties, and the loan went into default. Vista asked the Bank to modify the loan's terms so Vista could continue operating the shopping center and repay the debt. The Bank and Vista agreed to a loan modification in February 1987, under which the three Vista partners

each obtained an unconditional, irrevocable standby letter of ***239** credit in favor of the Bank in the amount of $125,000, for a total of $375,000. These were delivered to the Bank as additional collateral security for repayment of the loan. Under the modification agreement, the Bank was entitled to draw on the letters of credit if Vista defaulted or failed to pay the loan in full at maturity.

Western Security Bank, N.A. (Western) issued the letters of credit at the Vista partners' request. Each partner agreed to reimburse Western if it ever had to honor the letters. Under the agreement, each Vista partner gave Western a $125,000 promissory note. [FN3]

> FN3 The parties' arrangements reflected a common use of letters of credit. A letter of credit typically is an engagement by a financial institution (the issuer), made at the request of a customer (also referred to as the applicant or account party) to pay a specified sum of money to another person (the beneficiary) upon compliance with the conditions for payment stated in the letter of credit, i. e., presentation of the documents specified in the letter of credit. (See Gregora, *Letters of Credit in Real Property Finance Transactions* (Spring 1991) 9 Cal. Real Prop. J. 1, 1- 2.)
> A letter of credit transaction involves at least three parties and three separate and independent relationships: (1) the relationship between the issuer and the beneficiary created by the letter of credit; (2) the relationship between the customer and the beneficiary created by a contract or promissory note, with the letter of credit securing the customer's obligations to the beneficiary under the contract or note; and (3) the relationship between the customer and the issuer created by a separate contract under which the issuer agrees to issue the letter of credit for a fee and the customer agrees to reimburse the issuer for any amounts paid out under the letter of credit. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 2; *San Diego Gas & Electric Co. v. Bank Leumi*, *supra*, 42 Cal.App.4th at pp. 932-933; see *Voest-Alpine Intern. Corp. v. Chase Manhattan Bank* (2d Cir. 1983) 707 F.2d 680, 682; and *Colorado Nat. Bank, etc. v. Bd. of County Com'rs* (Colo. 1981) 634 P.2d 32, 36-38, for a discussion of the history and structure of letter of credit transactions.)
> Letters of credit can function as payment mechanisms. For example, in sales transactions a letter of credit assures the seller of payment when parting with goods, while the conditions for payment specified in the letter of credit (often a third party's documentation, such as a bill of lading) assure the buyer the goods have been shipped before payment is made. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 3.) In the letter of credit's role as a payment mechanism, a payment demand occurs in the ordinary course of business and is consistent with full performance of the underlying obligations. (*Ibid.*)
> The use of letters of credit has now expanded beyond that function, and they are employed in many other types of transactions in which one party requires assurances the other party will perform. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 3.) When used to support a debtor's obligations under a promissory note or other debt instrument, the so-called "standby" letter of credit typically provides that the issuer will pay the creditor when the creditor gives the issuer written certification that the debtor has failed to pay the amount due under the debtor's underlying obligation to the creditor. (*Ibid.*) Thus, a payment demand under a standby letter of credit indicates that there is a problem-either the customer is in financial difficulty, or the beneficiary and the customer are in a dispute. (*Ibid.*)

In December 1990, the Bank declared Vista in default on the modified loan. The Bank recorded a notice of default on February 13, 1991, and began ***240** nonjudicial foreclosure proceedings. (Civ. Code, § 2924.) It then filed an action against Vista seeking specific performance of the rents and profits provisions in the trust deed and appointment of a receiver.

On June 11, 1991, attorneys for the Bank and Vista signed a letter agreement settling the Bank's lawsuit. In that agreement, Vista promised it would "not take any legal action to prevent [the Bank's] drawing upon

[the letters of credit] after the Trustee's Sale of the Vista Place Shopping Center, ... provided that the amount of the draw by [the Bank] does not exceed an amount equal to the difference between [Vista's] indebtedness and the successful bid of the Trustee's Sale." Vista promised as well not to take any draw-related legal action against the Bank after the Bank's draw on the letters of credit.

On June 13, 1991, the Bank concluded its nonjudicial foreclosure on the shopping center under the power of sale in its deed of trust. The Bank was the only bidder, and it purchased the property. The sale left an unpaid deficiency of $505,890.16.

That same day, the Bank delivered the three letters of credit and drafts to Western and demanded payment of their full amount, $375,000. The Bank never sought to recover the $505,890.16 deficiency from Vista or the Vista partners. About the time that Western received the Bank's draw demand, it also received a written notice from the Vista partners' attorney. The notice asserted that Code of Civil Procedure section 580d barred Western from seeking reimbursement from the Vista partners for any payment on the letters of credit, and that if Western paid, it did so at its own risk.

Western did not honor the Bank's demand for payment on the letters of credit. Instead, on June 24, 1991, Western filed this declaratory relief action against the Bank, as well as Vista and the Vista partners (collectively, the Vista defendants). Western's complaint sought: (1) a declaration that Western is not obligated to accept or honor the Bank's tender of the letters of credit; or, alternatively, (2) a declaration that, if Western must pay on the letters of credit, the Vista partners must reimburse Western according to the terms of their promissory notes.

The Vista defendants cross-complained against Western for cancellation of their promissory notes and for injunctive relief. In July 1991, the Bank filed a first amended cross-complaint, alleging Western wrongfully dishonored the letters of credit, and the Vista defendants breached the agreement not to take legal action to prevent the Bank's drawing on the letters of credit.

The Bank, Western, and the Vista defendants each sought summary judgment. After several hearings and discussions with counsel, which produced a stipulation on the key facts, the court issued its decision on January ***241** 23, 1992. By its minute order of that date, the court (l) denied the three motions for summary judgment, (2) severed the Vista defendants' cross-complaint against Western for cancellation of the promissory notes, (3) severed the Bank's amended cross-complaint against the Vista defendants for breach of the letter agreement, and (4) issued a tentative decision on the trial of Western's complaint for declaratory relief and the Bank's amended cross-complaint against Western for wrongful dishonor of the letters of credit.

The trial court signed and filed the judgment on March 26, l992. The court decreed the Bank was entitled to recover $375,000 from Western, plus interest at 10 percent from June 13, 1991, the date of the Bank's demand, and costs of suit. The court further decreed Western could seek reimbursement from the Vista partners severally, and each Vista partner was obligated to reimburse Western, pursuant to the promissory notes in favor of Western, for its payment to the Bank. Western appealed, and the Vista defendants cross-appealed.

The Court of Appeal, after granting rehearing and accepting briefing by several amici curiae, issued an opinion reversing the trial court on December 21, 1993. In that opinion, the court concluded: "We hold that, under section 580d of the Code of Civil Procedure, an integral part of California's long-established antideficiency legislation, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, *may* decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's *nonjudicial* foreclosure on real property. Such a use of standby letters of credit constitutes a 'defect not apparent on the face of the documents' within the meaning of California Uniform Commercial Code section 5114, subdivision (2)(b), and therefore such permissive dishonor does no offense to the ' independence principle.' " (Original italics, fn. omitted.)

In that first opinion, the Court of Appeal also solicited the Legislature's attention: "To the extent that this result will present problems for real estate lenders with respect to the way they now do business (as the Bank and several amici curiae have strongly suggested), it is a matter which should be addressed to the Legislature. We have been presented with two important but conflicting statutory policies. Our reconciliation of them in this case may not prove as satisfactory in another factual context. It is therefore

a matter which should receive early legislative attention." (Fn. omitted.)

We granted review, and while the matter was pending, the Legislature passed Senate Bill No. 1612, an urgency statute that the Governor signed on ***242** September 15, 1994. Senate Bill No. 1612 affected four statutes. Section 1 of the bill amended Civil Code section 2787 to state that a letter of credit is not a form of suretyship obligation. (Stats. 1994, ch. 611, § 1.) Section 2 of the bill added Code of Civil Procedure section 580.5, explicitly excluding letters of credit from the purview of the antideficiency laws. (Stats. 1994, ch. 611, § 2.) Section 3 of the bill added Code of Civil Procedure section 580.7, which declares unenforceable letters of credit issued to avoid defaults on purchase money mortgages for owner-occupied real property containing one to four residential units. (Stats. 1994, ch. 611, § 3.) Section 4 of the bill made "technical, nonsubstantive changes" to section 5114. (Stats. 1994, ch. 611, § 4; Legis. Counsel's Dig., Sen. Bill No. 1612 (1993-1994 Reg. Sess.).)

The Legislature made its purpose explicit: "It is the intent of the Legislature in enacting Sections 2 and 4 of this act to confirm the independent nature of the letter of credit engagement and to abrogate the holding [of the Court of Appeal in this case] .... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either." (Stats. 1994, ch. 611, § 5.) The same purpose was echoed in the bill's statement of the facts calling for an urgency statute: "In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately." (Stats. 1994, ch. 611, § 6.)

After the Legislature enacted Senate Bill No. 1612, we requested the parties' views on its effect. On February 2, 1995, after considering the parties' responses, we transferred the case to the Court of Appeal with directions to vacate its decision and reconsider the cause in light of the Legislature's action.

On reconsideration, the Court of Appeal determined Senate Bill No. 1612 constituted a substantial change in existing law. Believing there was no clear evidence that the Legislature intended the statute to operate retrospectively, the Court of Appeal thought Senate Bill No. 1612 had only prospective application. Therefore, Senate Bill No. 1612 did not affect the Court of Appeal's prior conclusions on the parties' rights and obligations. The Court of Appeal filed its second opinion on September 29, 1995, mostly repeating its prior reasoning and conclusions. We granted the Bank's petition for review.

II. Discussion

(1a) As the Court of Appeal recognized, we first must determine the effect on this case of the Legislature's enactment of Senate Bill No. 1612. ***243** (2) A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207-1208 [246 Cal.Rptr. 629, 753 P.2d 585]; *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393 [182 P.2d 159].) A statute has retrospective effect when it substantially changes the legal consequences of past events. (*Kizer v. Hanna* (1989) 48 Cal.3d 1, 7 [255 Cal.Rptr. 412, 767 P.2d 679].) A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. (*Ibid.*) Of course, when the Legislature clearly intends a statute to operate retrospectively, we are obliged to carry out that intent unless due process considerations prevent us. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587, 592 [128 Cal.Rptr. 427, 546 P.2d 1371].)

(3) A corollary to these rules is that a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. (Cf. *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568 [20 Cal.Rptr.2d 341, 853 P.2d 507].) Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484 [116 P.2d 71]; *GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 Cal.App.4th 827, 833 [2 Cal.Rptr.2d 441]; see *Balen v. Peralta Junior College Dist.* (1974) 11 Cal.3d 821, 828, fn. 8 [114 Cal.Rptr. 589, 523 P.2d 629].) Such a legislative act has no retrospective effect because the true meaning of the statute remains the same. (*Stockton Sav. & Loan*

Bank v. Massanet (1941) 18 Cal.2d 200, 204 [114 P.2d 592]; *In re Marriage of Reuling* (1994) 23 Cal.App.4th 1428, 1440 [28 Cal.Rptr.2d 726]; *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 976-977 [185 Cal.Rptr. 49].)

One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation: " 'An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute.... [¶] If the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act-a formal change-rebutting the presumption of substantial change.' (1A Singer, Sutherland Statutory Construction (5th ed. 1993) § 22.31, p. ***244** 279, fns. omitted.)" (*RN Review for Nurses, Inc. v. State of California* (1994) 23 Cal.App.4th 120, 125 [28 Cal.Rptr.2d 354].) [FN4]

> FN4 The " 'presumption of substantial change' " mentioned in the quoted passage refers to the presumption that amendatory legislation accomplishing substantial change is intended to have only prospective effect. Some courts have thought changes categorized as merely formal or procedural present no problem of retrospective operation. However, as mentioned above, California has rejected this type of classification: "In truth, the distinction relates not so much to the form of the statute as to its effects. If substantial changes are made, even in a statute which might ordinarily be classified as procedural, the operation on existing rights would be retroactive because the legal effects of past events would be changed, and the statute will be construed to operate only in futuro unless the legislative intent to the contrary clearly appears." (*Aetna Cas. & Surety Co. v. Ind. Acc. Com., supra*, 30 Cal.2d at p. 394; cf. *Kizer v. Hanna, supra*, 48 Cal.3d at pp. 7-8.)

Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts. (*California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 213 [187 P.2d 702]; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935]; see *Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8 [185 Cal.Rptr. 582].) Indeed, there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment when a gulf of decades separates the two bodies. (Cf. *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 51-52 [276 Cal.Rptr. 114, 801 P.2d 357].) Nevertheless, the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them.

(4) "[A] subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act." (*California Emp. etc. Com. v. Payne, supra*, 31 Cal.2d at pp. 213-214.) Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a "clarification," the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. (*Id.* at p. 214.) Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question for the legislative body enacting the statute. (*Evangelatos v. Superior Court, supra*, 44 Cal.3d at p. 1206.) Thus, where a statute provides that it clarifies or declares existing law, "[i]t is obvious that such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of statutory construction, we must give effect to this intention unless there is some constitutional objection thereto." (*California Emp. etc. Com. v. Payne, supra*, 31 Cal.2d at ***245**p. 214; cf. *City of Sacramento v. Public Employees' Retirement System* (1994) 22 Cal.App.4th 786, 798 [27 Cal.Rptr.2d 545]; *City of Redlands v. Sorensen* (1985) 176 Cal.App.3d 202, 211 [221 Cal.Rptr. 728].)

With respect to Senate Bill No. 1612, the Legislature made its intent plain. Section 5 of the bill states, in part: "It is the intent of the Legislature in enacting Sections 2 and 4 of this act [FN5] to confirm the independent nature of the letter of credit engagement and to abrogate the holding in [the Court of Appeal's earlier opinion in this case], that presentment of a draft under a letter of credit issued in connection with

a real property secured loan following foreclosure violates Section 580d of the Code of Civil Procedure and constitutes a 'fraud ... or other defect not apparent on the face of the documents' under paragraph (b) of subdivision (2) of Section 5114 of the Commercial Code.... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either." (Stats. 1994, ch. 611, § 5.)

FN5 Section 2 of Senate Bill No. 1612 added Code of Civil Procedure section 580.5, which provides in pertinent part: "(b) With respect to an obligation which is secured by a mortgage or a deed of trust upon real property or an estate for years therein and which is also supported by a letter of credit, neither the presentment, receipt of payment, or enforcement of a draft or demand for payment under the letter of credit by the beneficiary of the letter of credit nor the honor or payment of, or the demand for reimbursement, receipt of reimbursement or enforcement of any contractual, statutory or other reimbursement obligation relating to, the letter of credit by the issuer of the letter of credit shall, whether done before or after the judicial or nonjudicial foreclosure of the mortgage or deed of trust or conveyance in lieu thereof, constitute any of the following: [¶] (1) An action within the meaning of subdivision (a) of Section 726, or a failure to comply with any other statutory or judicial requirement to proceed first against security. [¶] (2) A money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726, or the functional equivalent of any such judgment. [¶] (3) A violation of Section 580a, 580b, 580d, or 726." (Code Civ. Proc., § 580.5, subd. (b), as added by Stats. 1994, ch. 611, § 2.)
Section 4 of Senate Bill No. 1612 made certain technical, nonsubstantive changes to section 5114, which embodies the independence principle applicable to letter of credit payment obligations. (§ 5114, as amended by Stats. 1994, ch. 611, § 4.)

The Legislature's intent also was evident in its statement of the facts justifying enactment of Senate Bill No. 1612 as an urgency statute: "In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately." (Stats. 1994, ch. 611, § 6.) The Legislature's unmistakable focus was the disruptive effect of the Court of Appeal's decision on the expectations of parties to transactions where a letter of credit was issued in connection with a loan secured by real property. By abrogating the Court of Appeal's decision, the ***246** Legislature intended to protect those parties' expectations and restore certainty and stability to those transactions. If the Legislature acts promptly to correct a perceived problem with a judicial construction of a statute, the courts generally give the Legislature's action its intended effect. (See, e.g., *Escalante v. City of Hermosa Beach* (1987) 195 Cal.App.3d 1009, 1020 [241 Cal.Rptr. 199]; *City of Redlands v. Sorensen*, *supra*, 176 Cal.App.3d at pp. 211-212; *Tyler v. State of California*, *supra*, 134 Cal.App.3d at pp. 976-977; but see *Del Costello v. State of California*, *supra*, 135 Cal.App.3d at p. 893, fn. 8 [courts need not accept Legislature's interpretation of statute].) The plain import of Senate Bill No. 1612 is that the Legislature intended its provisions to apply immediately to existing loan transactions secured by real property and supported by outstanding letters of credit, including those in this case.

We next consider whether Senate Bill No. 1612 effected a change in the law, or instead represented a clarification of the state of the law before the Court of Appeal's decision. As mentioned earlier, Senate Bill No. 1612 amended two code sections (§ 5114; Civ. Code, § 2787) and added two sections to the Code of Civil Procedure (§ § 580.5, 580.7). The two code sections Senate Bill No. 1612 amended plainly made no substantive change in the law. The amendments to section 5114, which concerns the issuer's duty to honor a draft conforming to the letter of credit's terms, were "technical, nonsubstantive changes," as the Legislative Counsel's Digest correctly noted. (See Legis. Counsel's Dig., Sen. Bill No. 1612 (1993-1994 Reg. Sess.).)

In the other section amended, Civil Code section 2787, Senate Bill No. 1612 added a statement reflecting an established formal distinction: "A letter of credit is not a form of suretyship obligation." (Stats. 1994, ch. 611, § 1.) Civil Code section 2787

defines a surety or guarantor as "one who promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefor." Generally, a surety's liability for an obligation is secondary to, and derivative of, the liability of the principal for that obligation. (See, e.g., Civ. Code, § 2806 et seq.)

(5) By contrast, the liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. (See *San Diego Gas & Electric Co. v. Bank Leumi, supra*, 42 Cal.App.4th at pp. 933-934; *Paramount Export Co. v. Asia Trust Bank, Ltd.* (1987) 193 Cal.App.3d 1474, 1480 [238 Cal.Rptr. 920]; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank* (1978) 86 Cal.App.3d 175, 178 [150 Cal.Rptr. 69].) Thus, as the amendment to Civil Code section 2787 made clear, existing law viewed a ***247** letter of credit as an independent obligation of the issuing bank rather than as a form of guaranty or a surety obligation. (See, e.g., Dolan, The Law of Letters of Credit: Commercial and Standby Credits (rev. ed. 1996) § 2.10[1], pp. 2-61 to 2-63 (Dolan, Letters of Credit); 3 White & Summers, Uniform Commercial Code (4th ed. 1995) Letters of Credit, § 26-2, pp. 112-117.) The issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. (*San Diego Gas & Electric Co. v. Bank Leumi, supra*, 42 Cal.App.4th at p. 934.) Absent fraud, the issuer must pay upon proper presentment regardless of any defenses the customer may have against the beneficiary based in the underlying transaction. (*Ibid.*)

Senate Bill No. 1612's remaining statutory addition with which we are concerned, [FN6] Code of Civil Procedure section 580.5, specified that letter of credit transactions do not violate the antideficiency laws contained in Code of Civil Procedure sections 580a, 580b, 580d, or 726. (Code Civ. Proc., § 580.5, subd. (b)(3).) In particular, the new section specifies that a lender's resort to a letter of credit, and the issuer's concomitant right to reimbursement, do not constitute an "action" under Code of Civil Procedure section 726, or a failure to proceed first against security, regardless of whether they come before or after a foreclosure. (Code Civ. Proc., § 580.5, subd. (b)(1).) Similarly, letter of credit draws and reimbursements do not constitute deficiency judgments "or the functional equivalent of any such judgment." (Code Civ. Proc., § 580.5, subd. (b)(2).)

FN6 We do not address the effect of section 3 of Senate Bill No. 1612, which added section 580.7 to the Code of Civil Procedure. This section provides, in pertinent part: "(b) No letter of credit shall be enforceable by any party thereto in a loan transaction in which all of the following circumstances exist: [¶] (1) The customer is a natural person. [¶] (2) The letter of credit is issued to the beneficiary to avoid a default of the existing loan. [¶] (3) The existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer. [¶] (4) *The letter of credit is issued after the effective date of this section.*" (Code Civ. Proc., § 580.7, subd. (b), italics added, as added by Stats. 1994, ch. 611, § 3.) The italicized language, not found in the other statutory changes made by Senate Bill No. 1612, suggests the Legislature intended section 580.7 to have prospective effect only. However, this case does not involve any interpretation of this section or its effect, and so we express no view on those matters.

The Court of Appeal saw Code of Civil Procedure section 580.5 as a change in the law, in large part, because of the analogy it employed to examine the use of standby letters of credit as additional support for loans also secured by real property. The Bank argued a standby letter of credit was the functional equivalent of cash collateral. The Court of Appeal disagreed, instead analogizing standby letters of credit to guaranties and emphasizing the similarities of purpose and function: "No matter how it may be regarded ***248** by the beneficiary, a standby letter is certainly not cash or its equivalent from the perspective of the debtor; in reality, it represents his promise to provide *additional funds* in the event of his *future* default or deficiency, thus confirming its use not as a means of payment but rather as an instrument of guarantee." (Original italics.) The Court of Appeal relied on *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40 [71 Cal.Rptr. 64] (*Gradsky*) and *Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508 [259 Cal.Rptr. 425] (*Commonwealth Mortgage*).

Gradsky held that a creditor, after nonjudicial

foreclosure of the real property security for a note, could not recover the note's unpaid balance from a guarantor. (*Gradsky, supra*, 265 Cal.App.2d at p. 41.) Significantly, the court did not find Code of Civil Procedure section 580d's prohibition of deficiency judgments barred the creditor's claim on the guarantor: "It is barred by applying the principles of estoppel. The estoppel is raised as a matter of law to prevent the creditor from recovering from the guarantor after the creditor has exercised an election of remedies which destroys the guarantor's subrogation rights against the principal debtor." (*Gradsky, supra*, 265 Cal.App.2d at p. 41.)

The court noted that the guarantor, after payment, ordinarily would be equitably subrogated to the rights and security formerly held by the creditor. (*Gradsky, supra*, 265 Cal.App.2d at pp. 44-45; cf. Civ. Code, § § 2848, 2849.) However, where the creditor first resorts to nonjudicial foreclosure, the guarantor could not acquire any subrogation rights from the creditor because under Code of Civil Procedure section 580d, the nonjudicial sale eliminated both the security and the possibility of a deficiency judgment against the debtor. (*Gradsky, supra*, 265 Cal.App.2d at p. 45.) Because the creditor has a duty not to impair the guarantor's remedies against the debtor, the court held the creditor is estopped from pursuing the guarantor after electing a remedy-nonjudicial foreclosure-that eliminated the security for the debt and curtailed the possibility of the guarantor's reimbursement from the debtor. (*Id.* at pp. 46-47.)

However, the rules applicable to surety relationships do not govern the relationships between the parties to a letter of credit transaction. (See Dolan, Letters of Credit, *supra*, § 2.10[1], pp. 2-62 to 2-63.) At the time of this case's transactions, a majority of courts did not grant subrogation rights to an issuer that honored a draw on a credit; the issuer satisfied its own primary obligation, not the debt of another. (*Tudor Dev. Group, Inc. v. U.S. Fid. & Guar. Co.* (3d Cir. 1992) 968 F.2d 357, 361-363; see 3 White & Summers, Uniform Commercial Code, *supra*, Letters of Credit, § 26-15, pp. 211- 212; but see Cal. U. Com. Code, § 5117; fn. 2, *ante*, at pp. 237-238.) Nor does the ***249** beneficiary of a credit owe any obligations to the issuer; literal compliance with the letter of credit's terms for payment is all that is required. (Cf. *Paramount Export Co. v. Asia Trust Bank, Ltd., supra*, 193 Cal.App.3d at p. 1480; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank, supra*, 86 Cal.App.3d at p. 178.)

Gradsky contains additional language suggesting a much broader rule than its holding and analysis warranted. Going beyond the subrogation theory underlying its holding, the court observed: "If ... the guarantor ... can successfully assert an action in assumpsit against [the debtor] for reimbursement, the obvious result is to permit the recovery of a 'deficiency' judgment against the debtor following a nonjudicial sale of the security under a different label. It makes no difference to [the debtor's] purse whether the recovery is by the original creditor in a direct action following nonjudicial sale of the security, or whether the recovery is in an action by the guarantor for reimbursement of the same sum." (*Gradsky, supra*, 265 Cal.App.2d at pp. 45-46.) The court also said: "The Legislature clearly intended to protect the debtor from personal liability following a nonjudicial sale of the security. No liability, direct or indirect, should be imposed upon the debtor following a nonjudicial sale of the security. To permit a guarantor to recover reimbursement from the debtor would permit circumvention of the legislative purpose in enacting section 580d." (*Id.* at p. 46.) In view of the reasoning of the court's holding, these additional observations were unnecessary to the case's determination.

Commonwealth Mortgage followed *Gradsky* to hold a mortgage guaranty insurer could not enforce indemnity agreements to obtain reimbursement from the debtors for the insurer's payment to the lender after the lender's nonjudicial sale of its real property security. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 517.) The court said the mortgage guaranty insurance policy served the same purpose as the guaranty in *Gradsky*, and thus *Gradsky* would bar the insurer from being reimbursed under subrogation principles. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 517.) The court found the substitution of indemnity agreements for subrogation rights did not distinguish the case from *Gradsky*. Relying on the rule that a principal obligor incurs no additional liability on a note by also being a guarantor of it, the court said the agreements added nothing to the debtors' existing liability. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 517.) Thus, the court said the indemnity agreements could not be viewed as independent obligations. (*Ibid.*) Instead, the court concluded they were invalid attempts to have the debtors waive in advance the statutory prohibition against deficiency judgments. (*Ibid.*)

As did *Gradsky*, *Commonwealth Mortgage* also

inveighed against subterfuges that thwart the purposes of Code of Civil Procedure section 580d. ***250** (*Commonwealth Mortgage, supra,* 211 Cal.App.3d at pp. 515, 517.) "Although section 580d applies by its specific terms only to actions for 'any deficiency upon a note secured by a deed of trust' and not to actions based upon other obligations, the proscriptions of section 580d cannot be avoided through artifice [citation] .... In determining whether a particular recovery is precluded, we must consider whether the policy behind section 580d would be violated by such a recovery. [Citation.]" (*Commonwealth Mortgage, supra,* 211 Cal.App.3d at p. 515.) Thus, as did the *Gradsky* court, the *Commonwealth Mortgage* court augmented its opinion with concepts unnecessary to its determination of the case. [FN7]

> FN7 The precedential value of such statements in *Commonwealth Mortgage* also is clouded by a factual enigma the court left unresolved. As the Court of Appeal recognized, the lender in that case purchased the real property security at the trustee's sale for a full credit bid, which ought to have satisfied the debt. (*Commonwealth Mortgage, supra,* 211 Cal.App.3d at p. 512, fn. 3.) Despite the apparent absence of any deficiency, the court deemed it unnecessary to decide whether a deficiency in fact remained before discussing the effect of Code of Civil Procedure section 580d's prohibition of deficiency judgments. (*Commonwealth Mortgage, supra,* 211 Cal.App.3d at p. 515.)

The Court of Appeal in this case extrapolated from the *Gradsky* and *Commonwealth Mortgage* precedents a rule that swept far beyond their origins in guaranty and suretyship relationships: "Not only is a *creditor* prevented from obtaining a deficiency judgment against the debtor, but no other person is permitted to obtain what would, in effect, amount to a deficiency judgment." (Original italics.) The Court of Appeal apparently concluded a transaction has such an effect if it "has the practical consequence of requiring the debtor to pay *additional money* on the debt *after* default or foreclosure." (Original italics.) "Thus, we preserve the principle, clearly established by *Gradsky* and *Commonwealth* [*Mortgage*], that a lender should not be able to utilize a device of any kind to avoid the limitations of section 580d; and we apply that principle here to standby letters of credit." However, as we have seen, neither *Gradsky* nor *Commonwealth Mortgage* established such a principle as a rule of law. Instead, their statements accentuated the courts' vigilance regarding attempted evasions of the antideficiency and foreclosure laws.

(1b) The Court of Appeal mistook standby letters of credit for such an attempt by seeing them only as a form of guaranty. The court analogized the standby letter of credit to a guaranty because of the perceived functional similarities. One consequence of that analogy was that the court applied to standby letters of credit a rule whose legal justifications originated in the subrogation rights owed to sureties. However, as discussed before, letters of credit-standby or otherwise-are not a form of suretyship, and the rights of the parties to these transactions are not governed by suretyship principles. ***251** Further, suretyship involves no counterpart to the independence principle essential to letters of credit.

While analogies can improve our understanding of how and why letters of credit are useful, analogies cannot substitute for recognizing the letters' unique qualities. The authors of one leading treatise aptly summarized the point: "In short, a letter of credit is a letter of credit. As Bishop Butler once said, ' Everything is what it is and not another thing.' " (3 White & Summers, Uniform Commercial Code, *supra,* Letters of Credit, § 26-2, p. 117, fn. omitted.)

By focusing on analogies to guaranties, the Court of Appeal also overlooked that the parties in this case specifically intended the standby letters of credit to be additional security. [FN8] The parties' stipulated facts include that the original loan agreement was secured by a letter of credit, and that "Vista caused [the subsequent letters of credit] to be issued by Western as additional collateral security ...." The Court of Appeal found the letters of credit were not security interests in personal property under California Uniform Commercial Code section 9501, subdivision (4), as the Bank had argued. However, we need not determine whether a standby letter of credit comes within the scope of division 9 of the California Uniform Commercial Code. A letter of credit is sui generis as a means of securing or supporting performance of an obligation incurred in a separate transaction. Regardless of whether this idiosyncratic undertaking meets the qualifications for a security interest under the California Uniform Commercial Code, it nevertheless is a form of security for assuring another's performance.

FN8 To the extent that resort to analogy is

> appropriate for such a singular legal creation as the standby letter of credit, its closest relative would seem to be cash collateral. As one commentator noted: "In view of the relative positions of the beneficiary, the [customer], and the issuing bank, the standby letter of credit is more analogous to a cash deposit left with the beneficiary than it is to the traditional letter of credit or to the performance bond. Because the beneficiary generates all the documents necessary to obtain payment, he has the power to appropriate the funds represented by the standby letter of credit at any time.... [¶] Even though the standby letter of credit is functionally equivalent to a cash deposit, it differs from a cash deposit because the customer does not have to part with its own funds until payment is made and it is forced to reimburse the issuing bank. Because the cash-flow burden might otherwise be prohibitive, this is a great advantage to a party who enters into a large number of transactions simultaneously. Moreover, the beneficiary is satisfied; while it does not actually possess the funds, as it would if a cash deposit were used, it is protected by the credit of a financial institution." (Comment, *The Independence Rule in Standby Letters of Credit* (1985) 52 U. Chi. L.Rev. 218, 225-226, fns. omitted; see Dolan, Letters of Credit, *supra*, § 1.06, pp. 1-24 to 1-25, for a discussion of cases illustrating use of standby credits in lieu of cash, bonds, and other security.)

When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory ***252** prohibition of deficiency judgments. Code of Civil Procedure section 580d does not limit the security for notes given for the purchase of real property only to trust deeds; other security may be given as well. (*Freedland v. Greco* (1955) 45 Cal.2d 462, 466 [289 P.2d 463].) Creditors may resort to such other security in addition to nonjudicial foreclosure of the real property security. (*Ibid.*; *Hatch v. Security-First Nat. Bank* (1942) 19 Cal.2d 254, 260 [120 P.2d 869].) (6) A standby letter of credit is a security device created at the request of the customer/debtor that is an obligation owed independently by the issuing bank to the beneficiary/creditor. (See *San Diego Gas & Electric Co. v. Bank Leumi, supra*, 42 Cal.App.4th at pp. 933-934; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank, supra*, 86 Cal.App.3d at p. 178.) A creditor that draws on a letter of credit does no more than call on all the security pledged for the debt. When it does so, it does not violate the prohibition of deficiency judgments.

(1c) The Legislature plainly intended that the sections of Senate Bill No. 1612 we have addressed would apply to existing loan transactions supported by outstanding letters of credit. We conclude the Legislature's action did not effect a change in the law. Before the Legislature passed Senate Bill No. 1612, an issuer could not refuse to honor a conforming draw on a standby letter of credit-given as additional security for a real property loan-on the basis that the draw followed a nonjudicial sale of the real property security. The Court of Appeal created such a basis, but produced an unprecedented rule without solid legal underpinnings or any real connection to the actual language of the statutes involved.

Therefore, the aspects of Senate Bill No. 1612 we have discussed did not effect any change in the law, but simply clarified and confirmed the state of the law prior to the Court of Appeal's first opinion. Because the legislative action did not change the legal effect of past actions, Senate Bill No. 1612 does not act retrospectively; it governs this case. The Legislature concluded that Senate Bill No. 1612 should be given immediate effect to confirm and clarify the law applicable to loans secured by real property and supported by letters of credit. This conclusion was reasonable, particularly in view of the uncertainties the financial community evidently faced after the Court of Appeal's decision. (See, e.g., Murray, What *Should I Do With This Letter of Credit?* (Cont.Ed.Bar 1994) 17 Real Prop. L. Rptr. 133, 138-140.)

In sum, the Court of Appeal erred in concluding the Legislature's enactment of Senate Bill No. 1612 had no effect on this case. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision and make certain the parties' obligations when letters of credit supported loans also secured by real property. The Legislature manifestly intended the ***253** respective obligations of the parties to a letter of credit transaction should remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Senate Bill No. 1612. Accordingly, we conclude the judgment of the Court of Appeal should be reversed. [FN9]

FN9 Western belatedly claims it should not

be liable for prejudgment interest on the amount of the letter of credit it dishonored. It argues it should not be "punished" for seeking a declaration of its rights in a novel and complex case. The Court of Appeal decided that "if it is ultimately determined that Western is liable to the Bank on the letters of credit then it must follow that it is liable for legal interest thereon from and after the day when its obligation to pay on the letters arose. (Civ. Code, § 3287, subd. (a).)" Western did not petition for review of this aspect of the Court of Appeal decision. In any event, Western's liability for prejudgment interest is clear. The award of this interest is not imposed for the sake of punishment. The award depends only on whether Western knew or could compute the amount the Bank was entitled to recover on the letters of credit. (*Fireman's Fund Ins. Co. v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154, 1173 [286 Cal.Rptr. 146].) The Court of Appeal correctly assessed Western's liability for prejudgment interest.

Disposition

The judgment of the Court of Appeal is reversed, and the cause remanded for further proceedings consistent with this opinion.

George, C. J., Baxter, J., and Brown, J., concurred.

WERDEGAR, J.,

Concurring and Dissenting.-I concur in the majority's conclusion that California Uniform Commercial Code section 5114, subdivision (2)(b), does not excuse Western Security Bank, N.A. (Western), the issuer, from honoring its letter of credit upon demand for payment by Beverly Hills Business Bank (the Bank), the beneficiary. I would not, however, reach this conclusion under the majority's reasoning that Senate Bill No. 1612 (Stats. 1994, ch. 611) merely declared existing law and that, prior to the bill's enactment, the antideficiency law had no effect on letters of credit. Instead, I agree with Justice Mosk that section 5114 simply does not bear the interpretation that the use of a letter of credit to support an obligation secured by a mortgage or deed of trust constitutes "fraud in the transaction." (Cal. U. Com. Code, § 5114, subd. (2); see conc. & dis. opn. of Mosk, J., *post*, at pp. 262-263.) Thus, Western was obliged to honor the Bank's demand for payment.

The conclusion that the Bank may properly draw upon the letter of credit does not compel the further conclusion that the antideficiency law ultimately offers no protection to Vista Place Asssociates. This is illustrated by a comparison of the majority opinion and the separate opinion of Justice Mosk, which agree on the former point but disagree on the latter. In my view, the Bank's petition for review of a decision rejecting its claim (as ***254** beneficiary) against Western (as issuer) under superseded law does not present an appropriate vehicle for broader pronouncements on the antideficiency law's effect on other claims and other parties. Because the Legislature in Senate Bill No. 1612 has articulated rules that will govern all future letters of credit, and because letters of credit typically expire after a finite period, the status of residual letters of credit issued before the bill's effective date will soon become an academic question. In contrast, whether the antideficiency law should as a general matter be expansively or narrowly construed remains of vital importance, as demonstrated by the interest in this case shown by amici curiae involved in the purchase and sale of real estate. Under these circumstances, the principle of judicial restraint counsels against the majority's sweeping declaration that the reach of the antideficiency law prior to Senate Bill No. 1612 was too narrow to affect the respective obligations of the parties to a letter of credit transaction.

Underlying the broad declaration just mentioned is the majority's erroneous conclusion that Senate Bill No. 1612 merely clarified existing law and, thus, may be applied to transactions entered into before the bill's operative date. Before that date, the antideficiency law did not distinguish between residential and nonresidential real estate transactions. Now, however, as amended by Senate Bill No. 1612, the antideficiency law does distinguish between residential and nonresidential real estate transactions. New Code of Civil Procedure section 580.7, which the bill added, makes a letter of credit unenforceable when issued to avoid the default of an existing loan and "[t]he existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer." (*Id.*, subd. (b)(3).)

In light of this provision, we may conclude that letters of credit before Senate Bill No. 1612 either were enforceable in the specified residential real

estate transactions but now are not, or were not enforceable in all other real estate transactions but now are. This case does not require us to choose between these possibilities. Either way, Senate Bill No. 1612 went beyond mere clarification to change the effective scope of the antideficiency law. To apply it retroactively would change the legal consequences of past acts. Under these circumstances, it is appropriate to apply the ordinary presumption that a legislative act operates prospectively, and inappropriate to apply to this case the new set of rules articulated in Senate Bill No. 1612.

MOSK, J.,

Concurring and Dissenting.-I agree with the majority that the issue before us is not whether Senate Bill No. 1612 (1993-1994 Reg. Sess.) (hereafter Senate Bill No. 1612) has retrospective application. It does not. ***255** Rather, we must determine what the law was *before* Senate Bill No. 1612 was enacted to provide, in effect, a "standby letter of credit exception" to the antideficiency statutes.

I disagree with the majority that Senate Bill No. 1612 did not change prior law. In my view, far from merely "clarifying" the "true" meaning of prior law-as the majority implausibly assert-its numerous amendments and additions to the statutes reversed what the Court of Appeal aptly referred to as "the fifty years of consistent solicitude which California courts have given to the foreclosed purchase money mortgagee." [FN1]

> FN1 Among other things, Senate Bill No. 1612 amended Civil Code section 2787, added Code of Civil Procedure sections 580.5 and 580.7, and amended California Uniform Commercial Code former section 5114. (See Stats. 1994, ch. 611, § § 1-6.) It appears, however, that our decision in this matter will have limited application. It will operate only when: (a) a lender obtained a standby letter of credit prior to September 15, 1994, the effective date of Senate Bill No. 1612, to support a transaction secured by a deed of trust against real property; (b) the creditor defaulted on the deed of trust; (c) the lender elected to foreclose on by way of trustee's sale rather than through judicial foreclosure; and (d) the lender thereafter demanded payment under the standby letter of credit. In view of the limited precedential value of this case, a better course would have been to dismiss review as improvidently granted.

As the majority concede, a legislative declaration of an existing statute's meaning is neither binding nor conclusive. "The Legislature has no authority to interpret a statute. That is a judicial task." (*Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8 [185 Cal.Rptr. 582]; see also *California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 213 [187 P.2d 702]; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935].) As the majority also concede, the legislative interpretation of prior law in this case is particularly unworthy of deference: Nothing in the previous legislative history of letter of credit statutes suggests an intent to create an exception to the antideficiency statutes. Indeed, it is apparently only recently that standby letters of credit have been used in real estate transactions.

Accordingly, unlike the majority, I conclude that before Senate Bill No. 1612, standby letters of credit were not exempt from the antideficiency statutes precluding creditors from obtaining a deficiency judgment from a creditor following nonjudicial foreclosure on a real property loan.

I.

As the Court of Appeal emphasized, before Senate Bill No. 1612, the potential conflict between the letters of credit statutes and the antideficiency statutes posed a question of first impression, arising from the relatively recent innovation of the use of standby letters of credit as additional security ***256** for real estate loans. Does the so-called "independence principle"- under which letters of credit stand separate and apart from the underlying transaction-constitute an exception to the antideficiency statutes that bar deficiency judgments after a nonjudicial foreclosure on real property?

The majority conclude that even before Senate Bill No. 1612, there was no restriction on the right of a creditor to demand payment on a standby letter of credit after a nonjudicial foreclosure on real property. They are wrong.

Under the so-called "independence principle," the issuer of a standby letter of credit "must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying

contract for sale or other contract between the customer and the beneficiary." (Cal. U. Com. Code, former § 5114, subd. (1), as amended by Stats. 1994, ch. 611, § 4.) In turn, the issuer of a standby letter of credit "is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit." (*Id.*, subd. (3).) [FN2]

> FN2 As the reference to "goods or documents" in the statute suggests, the drafters appear to have contemplated use of letters of credit in commercial financial transactions, not as additional security in real estate transactions.

A standby letter of credit specifically operates as a means of guaranteeing payment in the event of a future default. "A letter of credit is an engagement by an issuer (usually a bank) to a beneficiary, made at the request of a customer, which binds the bank to honor drafts up to the amount of the credit upon the beneficiary's compliance with certain conditions specified in the letter of credit. The customer is ultimately liable to reimburse the bank. The traditional function of the letter of credit is to finance an underlying customer's beneficiary contract for the sale of goods, directing the bank to pay the beneficiary for shipment. A different function is served by the ' standby' letter of credit, which directs the bank to pay the beneficiary not for his own performance but upon the customer's default, thereby serving as a guarantee device." (Note, "*Fraud in the Transaction": Enjoining Letters of Credit During the Iranian Revolution* (1980) 93 Harv. L.Rev. 992, 992-993, fns. omitted.)

Thus, in practical effect, a standby letter of credit constitutes a promise to provide additional funds in the event of a future default or deficiency. As such, prior to passage of Senate Bill No. 1612, it potentially came up against the restrictions of the antideficiency statutes barring a creditor from obtaining additional funds from a debtor after a nonjudicial foreclosure. Indeed, as ***257** the parties concede, nothing in the applicable statutes or legislative history prior to the amendments and additions enacted by Senate Bill No. 1612 created any specific exception to the antideficiency statutes for standby letters of credit. Nor did anything in the applicable statutes or legislative history "imply" that the antideficiency statutes must yield to the so-called "independence principle," based on public policy or otherwise.

We have previously summarized the history and purpose of the antideficiency statutes as follows.

"Prior to 1933, a mortgagee of real property was required to exhaust his security before enforcing the debt or otherwise to waive all rights to his security [citations]. However, having resorted to the security, whether by judicial sale or private nonjudicial sale, the mortgagee could obtain a deficiency judgment against the mortgagor for the difference between the amount of the indebtedness and the amount realized from the sale. As a consequence during the great depression with its dearth of money and declining property values, a mortgagee was able to purchase the subject real property at the foreclosure sale at a depressed price far below its normal fair market value and thereafter to obtain a double recovery by holding the debtor for a large deficiency. [Citations.] In order to counteract this situation, California in 1933 enacted fair market value limitations applicable to both judicial foreclosure sales ([Code Civ. Proc.,] § 726) and private foreclosure sales ([*id.*,] § 580a) which limited the mortgagee's deficiency judgment after exhaustion of the security to the difference between the fair [market] value of the property at the time of the sale (irrespective of the amount actually realized at the sale) and the outstanding debt for which the property was security. Therefore, if, due to the depressed economic conditions, the property serving as security was sold for less than the fair [market] value as determined under section 726 or section 580a, the mortgagee could not recover the amount of that difference in this action for a deficiency judgment. [Citation.]

"In certain situations, however, the Legislature deemed even this partial deficiency too oppressive. Accordingly, in 1933 it enacted section 580b [citation] which barred deficiency judgments altogether on purchase money mortgages. 'Section 580b places the risk of inadequate security on the purchase money mortgagee. A vendor is thus discouraged from overvaluing the security. Precarious land promotion schemes are discouraged, for the security value of the land gives purchasers a clue as to its true market value. [Citation.] If inadequacy of security results, not from overvaluing, but from a decline in property values during a general or local depression, section 580b prevents the aggravation of the downturn that would result if defaulting ***258** purchasers were burdened with large personal liability. Section 580b thus serves as a

stabilizing factor in land sales.' [Citations.]

"Although both judicial foreclosure sales and private nonjudicial foreclosure sales provided for identical deficiency judgments in nonpurchase money situations subsequent to the 1933 enactment of the fair value limitations, one significant difference remained, namely property sold through judicial foreclosure was subject to the statutory right of redemption ([Code Civ. Proc.,] § 725a), while property sold by private foreclosure sale was not redeemable. By virtue of sections 725a and 701, the judgment debtor, his successor in interest or a junior lienor could redeem the property at any time during one year after the sale, frequently by tendering the sale price. The effect of this right of redemption was to remove any incentive on the part of the mortgagee to enter a low bid at the sale (since the property could be redeemed for that amount) and to encourage the making of a bid approximating the fair market value of the security. However, since real property purchased at a private foreclosure sale was not subject to redemption, the mortgagee by electing this remedy, could gain irredeemable title to the property by a bid substantially below the fair value and still collect a deficiency judgment for the difference between the fair value of the security and the outstanding indebtedness.

"In 1940 the Legislature placed the two remedies, judicial foreclosure sale and private nonjudicial foreclosure sale on a parity by enacting section 580d [citation]. Section 580d bars 'any deficiency judgment' following a private foreclosure sale. 'It seems clear ... that section 580d was enacted to put judicial enforcement on a parity with private enforcement. This result could be accomplished by giving the debtor a right to redeem after a sale under the power. The right to redeem, like proscription of a deficiency judgment, has the effect of making the security satisfy a realistic share of the debt. [Citation.] By choosing instead to bar a deficiency judgment after private sale, the Legislature achieved its purpose without denying the creditor his election of remedies. If the creditor wishes a deficiency judgment, his sale is subject to statutory redemption rights. If he wishes a sale resulting in nonredeemable title, he must forego the right to a deficiency judgment. In either case his debt is protected.' " (*Cornelison v. Kornbluth* (1975) 15 Cal.3d 590, 600-602 [125 Cal.Rptr. 557, 542 P.2d 981], fns. omitted.)

Over the several decades since their enactment, our courts have construed the antideficiency statutes liberally, rejecting attempts to circumvent the proscriptions against deficiency judgments after nonjudicial foreclosure. "It is well settled that the proscriptions of section 580d cannot be avoided through artifice ...." (***259***Rettner v. Shepherd* (1991) 231 Cal.App.3d 943, 952 [282 Cal.Rptr. 687]; accord, *Freedland v. Greco* (1955) 45 Cal.2d 462, 468 [289 P.2d 463] [In construing the antideficiency statutes, " 'that construction is favored which would defeat subterfuges, expediencies, or evasions employed to continue the mischief sought to be remedied by the statute, or ... to accomplish by indirection what the statute forbids.' "]; *Simon v. Superior Court* (1992) 4 Cal.App.4th 63, 78 [5 Cal.Rptr.2d 428].)

Nor can the antideficiency protections be waived by the borrower at the time the loan was made. (See Civ. Code, § 2953 [such waiver "shall be void and of no effect"]; *Valinda Builders, Inc. v. Bissner* (1964) 230 Cal.App.2d 106, 112 [40 Cal.Rptr. 735] [The debtor's waiver agreement was "contrary to public policy, void and ineffectual for any purpose."].)

In this regard, as the Court of Appeal observed, two decisions are of particular relevance here: *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40 [71 Cal.Rptr. 64] (hereafter *Gradsky*), and *Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508 [259 Cal.Rptr. 425] (hereafter *Commonwealth*).

In *Gradsky*, the Court of Appeal held that Code of Civil Procedure section 580d operated to preclude a lender from collecting the unpaid balance of a promissory note from the guarantor after a nonjudicial foreclosure on the real property securing the debt. It concluded that if the guarantor could successfully assert an action against the borrower for reimbursement, "the obvious result is to permit the recovery of a 'deficiency' judgment against the [borrower] following a nonjudicial sale of the security under a different label." (*Gradsky, supra*, 265 Cal.App.2d at pp. 45-46.) "The Legislature clearly intended to protect the [borrower] from personal liability following a nonjudicial sale of the security. No liability, direct or indirect, should be imposed upon the [borrower] following a nonjudicial sale of the security. To permit a guarantor to recover reimbursement from the debtor would permit circumvention of the legislative purpose in enacting section 580d." (*Id.* at p. 46.)

In *Commonwealth*, borrowers purchased real

property with a loan secured by promissory notes provided by a bank. At the bank's request, they obtained policies of mortgage guarantee insurance to secure payment on the promissory notes. They also signed indemnity agreements promising to reimburse the mortgage insurer for any funds it paid out under the policy. When the borrowers defaulted on the promissory notes, the bank foreclosed nonjudicially on the real property. It then collected on the mortgage insurance; the mortgage insurer then brought an action for reimbursement on the indemnity agreements. ***260**

The Court of Appeal in *Commonwealth* held that reimbursement was barred by Code of Civil Procedure section 580d. It rejected the argument that the indemnity agreements constituted separate and independent obligations: "The instant indemnity agreements add nothing to the liability [the borrowers] already incurred as principal obligors on the notes .... To splinter the transaction and view the indemnity agreements as separate and independent obligations ... is to thwart the purpose of section 580d by a subterfuge [citation], a result we cannot permit." (*Commonwealth, supra*, 211 Cal.App.3d at p. 517.)

The majority's attempt to distinguish *Gradsky* and *Commonwealth*, by characterizing them as grounded in subrogation law, is unpersuasive. Indeed, in *Commonwealth*, subrogation law was not directly in issue; the indemnity obligation provided a contract upon which to base collection. [FN3]

> FN3 In any event, the analogy between standby letters of credit and guarantees is not as "forced" as the majority would suggest. As one commentator recently observed, "upon closer analysis, the borders between standby credits and contracts of guarantee are not so well settled as they may first appear." (McLaughlin, *Standby Letters of Credit and Guaranties: An Exercise in Cartography* (1993) 34 Wm. & Mary L.Rev. 1139, 1140; see also Alces, *An Essay on Independence, Interdependence, and the Suretyship Principle* (1993) 1993 U. Ill. L.Rev. 447 [rejecting distinction between letters of credit and "secondary obligations," i.e., guarantees and sureties].) Moreover, "courts have long recognized that, in a sense, issuers of credits 'must be regarded as sureties.' [Citation.] A seller of goods often insists on a commercial letter of credit because he is unsure of the buyer's ability to pay. The standby letter of credit arises out of situations in which the beneficiary wants to guard against the applicant's nonperformance. In both instances, the credit serves in the nature of a guaranty." Dolan, The Law of Letters of Credit: Commercial and Standby Credits (2d ed. 1991) § 2.10[1], pp. 2-61 to 2-62.)

The majority miss the point. As the Court of Appeal in this matter explained: "*Gradsky* and *Commonwealth* reflect the strong judicial concern about the efforts of secured real property lenders to circumvent section 580d by the use of financial transactions between debtors and third parties which involve post-nonjudicial foreclosure debt obligations for the borrowers. Their common and primary focus is on the lender's requirement that the debtor make arrangements with a third party to pay a portion or all of the mortgage debt remaining after a foreclosure, i.e., to pay the debtor's deficiency."

The Legislature, in enacting Senate Bill No. 1612, expressly abrogated the Court of Appeal decision in this matter and gave primacy to the so-called "independence principle" as against the antideficiency protections. Its additions and amendments to the statutes-lobbied for, and drafted by, the California Bankers Association-significantly altered prior law. Senate Bill No. 1612, therefore, should have prospective application only. ***261**

In their strained attempt to reach the conclusion that Senate Bill No. 1612 governs this case, the majority adopt the fiction that a standby letter of credit is an "idiosyncratic" form of "security" or the "functional equivalent" of cash collateral. They offer no sound support for such an approach. There is none. [FN4]

> FN4 The principal "authority" cited by the majority for the proposition that standby letters of credit are the "functional equivalent" of cash collateral is a student law review note published over a decade ago-and apparently never cited in any case in California or elsewhere. (Comment, *The Independence Rule in Standby Letters of Credit* (1985) 52 U. Chi. L.Rev. 218.) Significantly, the note nowhere discusses the use of standby letters of credit in transactions involving purchase money mortgages or the potential conflict between the so-called "independence principle" and antideficiency statutes. Indeed, it assumes

> that "[t]hose who engage in standby letter of credit transactions are usually large corporate or governmental entities with access to high-quality counsel and are thus in a position to evaluate and respond to the risks involved." (*Id.* at p. 238.) Needless to say, that is often *not* the case in real property transactions, particularly those involving residential property. As a leading commentator observed: "the motivation of the parties to a real estate secured transaction is frequently other than purely commercial, and their relative bargaining power is often grossly disproportionate." (Hetland & Hansen, *The "Mixed Collateral" Amendments to California's Commercial Code-Covert Repeal of California's Real Property Foreclosure and Antideficiency Provisions or Exercise in Futility?* (1987) 75 Cal.L.Rev. 185, 188, fn. omitted.)

As the Court of Appeal observed, from the perspective of the debtor, a standby letter of credit is not cash or its equivalent. It is, instead, a promise to provide additional funds *in the event of future default or deficiency* and has the practical consequence of requiring the debtor to pay *additional* money on the debt *after* default or foreclosure. [FN5] Moreover, unlike cash, which can be pledged as collateral security only once, a standby letter of credit does not require a debtor to part with its own funds until payment is made and thus permits a borrower to use standby letters of credit in a large number of transactions separately. Cash collateral, by contrast, does not impose personal liability on the borrower following a trustee's sale and does not encourage speculative lending practices.

> FN5 Although it appears to be uncommon, an issuer of a standby letter of credit may demand security from its customer in the form of cash collateral or personal property as a condition for issuing the letter of credit. In the event of a draw on the letter of credit, the issuer would then have recourse to the pledged security, up to the value of the draw, without requiring its customer to pay additional money. Whether a real estate lender's draw on a standby letter of credit backed by security, and not by a mere promise to pay, would fall within the mixed security rule is a difficult question that need not be addressed here.

As the Court of Appeal observed: "For us to conclude that such use of a standby letter of credit is the same as an increased cash investment (whether or not from borrowed funds) is to deny reality and to invite the very overvaluation and potential aggravation of an economic downturn which the antideficiency legislation was originally enacted to prevent." ***262**

II.

The Court of Appeal correctly concluded that, before Senate Bill No. 1612, there was no implied exception to the antideficiency statutes for letters of credit. It erred, however, in holding that Western Security Bank, N.A. (Western) could have refused to honor the letter of credit on the ground that the Beverly Hills Business Bank (Bank), in presenting the letters of credit after a nonjudicial foreclosure, worked an "implied" fraud on Vista Place Associates (Vista).

The Court of Appeal cited former California Uniform Commercial Code former section 5114, subdivision (2)(b), which provides that when there has been a notification from the customer of "fraud, forgery or other defect not apparent on the face of the documents," the issuer "may"-but is not obligated to-"honor the draft or demand for payment."(Cal. U. Com. Code, § 5114, subd. (2)(b) as amended by Stats. 1994, ch. 611, § 4.) [FN6] The statute is inapplicable under the present facts.

> FN6 An issuer's obligations and rights are now governed by California Uniform Commercial Code section 5108, enacted in 1996 as part of Senate Bill No. 1599. (Stats. 1996, ch. 176, § 7.) The same legislation repealed section 5114, relating to the issuer's duty to honor a draft or demand for payment, as part of the repeal of division 5, Letters of Credit. (Stats. 1996, ch. 176, § 6.)

Western, presented with a demand for payment on a letter of credit, was limited to determining whether the documents presented by the beneficiary complied with the letter of credit-a purely ministerial task of comparing the documents presented against the description of the documents in the letter of credit. If the documents comply on their face, the issuer must honor the draw, regardless of disputes concerning the underlying transaction. (*Lumbermans Acceptance Co. v. Security Pacific Nat. Bank* (1978) 86 Cal.App.3d 175, 178 [150 Cal.Rptr. 69]; Cal. U. Com. Code, former § 5109, subd. (2) as added by Stats. 1963, ch. 819, § 1, p. 1934.) Thus, in this case, Western was

not entitled to look beyond the documents presented by the Bank and refuse to honor the standby letter of credit based on a potential violation of the antideficiency statutes in the underlying transaction.

In my view, the concurring and dissenting opinion by Justice Kitching in the Court of Appeal correctly reconciled the policies behind standby letter of credit law and the antideficiency provisions of Code of Civil Procedure section 580d, as they existed *before* Senate Bill No. 1612. Thus, I would conclude that Western was obligated, under the so-called "independence principle," to honor the standby letter of credit presented by the Bank. None of the limited exceptions to that rule applied. Western was not, however, without recourse. It was entitled to seek reimbursement from Vista, pursuant ***263** to former California Uniform Commercial Code former section 5114, subdivision (3) and its promissory notes. Vista, in turn, could seek disgorgement from the Bank, if it has not legally waived its protection under Code of Civil Procedure section 580d-an issue that is not before us and should be remanded to the trial court. As Justice Kitching's concurrence and dissent concluded, "[t]his procedure would retain certainty in the California letter of credit market while implementing the policies supporting section 580d."

Kennard, J., concurred. ***264**

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24 Cal.2d 753
24 Cal.2d 753, 151 P.2d 233, 155 A.L.R. 405
(Cite as: 24 Cal.2d 753)

WHITCOMB HOTEL, INC. (a Corporation) et al., Petitioners,
v.
CALIFORNIA EMPLOYMENT COMMISSION et al., Respondents; FERNANDO R. NIDOY et al., Interveners and Respondents.
S. F. No. 16854.

Supreme Court of California

Aug. 18, 1944.

HEADNOTES

(1) Statutes § 180(2)--Construction--Executive or Departmental Construction.
The construction of a statute by the officials charged with its administration must be given great weight, for their substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in drafting the statute.

See 23 **Cal.Jur.** 776; 15 **Am.Jur.** 309.

(2) Statutes § 180(2)--Construction--Executive or Departmental Construction.
An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment.

(3) Statutes § 180(2)--Construction--Executive or Departmental Construction.
An erroneous administrative construction does not govern the interpretation of a statute, even though the statute is subsequently reenacted without change.

(4) Unemployment Relief--Disqualification--Refusal to Accept Suitable Employment.
The disqualification imposed on a claimant by Unemployment Insurance Act, § 56(b) (Stats. 1935, ch. 352, as amended; Deering's Gen. Laws, 1937, Act 8780d), for refusing without good cause to accept suitable employment when offered to him, or failing to apply for such employment when notified by the district public employment office, is an absolute disqualification that necessarily extends throughout the period of his unemployment entailed by his refusal to accept suitable employment, and is terminated only by his subsequent employment.

See 11 **Cal.Jur. Ten-year Supp.** (Pocket Part) "Unemployment Reserves and Social Security."

(5) Unemployment Relief--Disqualification--Refusal to Accept Suitable Employment.
One who refuses suitable employment without good cause is not involuntarily unemployed through no fault of his own. He has no claim to benefits either at the time of his refusal or at any subsequent time until he again brings himself within the Unemployment Insurance Act. ***754**

(6) Unemployment Relief--Disqualification--Refusal to Accept Suitable Employment.
Employment Commission Rule 56.1, which attempts to create a limitation as to the time a person may be disqualified for refusing to accept suitable employment, conflicts with Unemployment Insurance Act, § 56(b), and is void.

(7) Unemployment Relief--Powers of Employment Commission--Adoption of Rules.
The power given the Employment Commission by the Unemployment Insurance Act, § 90, to adopt rules and regulations is not a grant of legislative power, and in promulgating such rules the commission may not alter or amend the statute or enlarge or impair its scope.

(8) Unemployment Relief--Remedies of Employer--Mandamus.
Inasmuch as the Unemployment Insurance Act, § 67, provides that in certain cases payment of benefits shall be made irrespective of a subsequent appeal, the fact that such payment has been made does not deprive an employer of the issuance of a writ of mandamus to compel the vacation of an award of benefits when he is entitled to such relief.

SUMMARY

PROCEEDING in mandamus to compel the California Employment Commission to vacate an award of unemployment benefits and to refrain from charging petitioners' accounts with benefits paid. Writ granted.

COUNSEL

Brobeck, Phleger & Harrison, Gregory A. Harrison and Richard Ernst for Petitioners.

Robert W. Kenny, Attorney General, John J. Dailey, Deputy Attorney General, Forrest M. Hill, Gladstein, Grossman, Margolis & Sawyer, Ben Margolis, William Murrish, Gladstein, Grossman, Sawyer & Edises, Aubrey Grossman and Richard Gladstein for Respondents.

Clarence E. Todd and Charles P. Scully as Amici Curiae on behalf of Respondents.

TRAYNOR, J.

In this proceeding the operators of the Whitcomb Hotel and of the St. Francis Hotel in San Francisco seek a writ of mandamus to compel the California Employment Commission to set aside its order granting unemployment insurance benefits to two of their former employees, Fernando R. Nidoy and Betty Anderson, corespondents in this action, and to restrain the commission from charging petitioners' accounts with benefits paid pursuant to ***755** that order. Nidoy had been employed as a dishwasher at the Whitcomb Hotel, and Betty Anderson as a maid at the St. Francis Hotel. Both lost their employment but were subsequently offered reemployment in their usual occupations at the Whitcomb Hotel. These offers were made through the district public employment office and were in keeping with a policy adopted by the members of the Hotel Employers' Association of San Francisco, to which this hotel belonged, of offering available work to any former employees who recently lost their work in the member hotels. The object of this policy was to stabilize employment, improve working conditions, and minimize the members' unemployment insurance contributions. Both claimants refused to accept the proffered employment, whereupon the claims deputy of the commission ruled that they were disqualified for benefits under section 56(b) of the California Unemployment Insurance Act (Stats. 1935, ch. 352, as amended; Deering's Gen. Laws, 1937, Act 8780d), on the ground that they had refused to accept offers of suitable employment, but limited their disqualification to four weeks in accord with the commission's Rule 56.1. These decisions were affirmed by the Appeals Bureau of the commission. The commission, however, reversed the rulings and awarded claimants benefits for the full period of unemployment on the ground that under the collective bargaining contract in effect between the hotels and the unions, offers of employment could be made only through the union.

In its return to the writ, the commission concedes that it misinterpreted the collective bargaining contract, that the agreement did not require all offers of employment to be made through the union, and that the claimants are therefore subject to disqualification for refusing an offer of suitable employment without good cause. It alleges, however, that the maximum penalty for such refusal under the provisions of Rule 56.1, then in effect, was a four-week disqualification, and contends that it has on its own motion removed all charges against the employers for such period.

The sole issue on the merits of the case involves the validity of Rule 56.1, which limits to a specific period the disqualification imposed by section 56(b) of the act. Section 56 of the act, under which the claimants herein were admittedly disqualified, ***756** provides that: "An individual is not eligible for benefits for unemployment, and no such benefit shall be payable to him under any of the following conditions: ... (b) If without good cause he has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by the District Public Employment Office." Rule 56.1, as adopted by the commission and in effect at the time here in question, restated the statute and in addition provided that: "In pursuance of its authority to promulgate rules and regulations for the administration of the Act, the Commission hereby provides that an individual shall be disqualified from receiving benefits if it finds that he has failed or refused, without good cause, either to apply for available, suitable work when so directed by a public employment office of the Department of Employment or to accept suitable work when offered by any employing unit or by any public employment office of said Department. Such disqualification shall continue for the week in which such failure or refusal occurred, and for not more than three weeks which immediately follow such week as determined by the Commission according to the circumstances in each case." The validity of this rule depends upon whether the commission was empowered to adopt it, and if so, whether the rule is reasonable.

The commission contends that in adopting Rule 56.1 it exercised the power given it by section 90 of the act to adopt "rules and regulations which to it seem necessary and suitable to carry out the provisions of this act" (2 Deering's Gen. Laws, 1937, Act 8780d, § 90(a)). In its view section 56(b) is ambiguous because it fails to specify a definite period of disqualification. The commission contends that a

fixed period is essential to proper administration of the act and that its construction of the section should be given great weight by the court. It contends that in any event its interpretation of the act as embodied in Rule 56.1 received the approval of the Legislature in 1939 by the reenactment of section 56(b) without change after Rule 56.1 was already in effect.

(1) The construction of a statute by the officials charged with its administration must be given great weight, for their "substantially contemporaneous expressions of opinion are ***757** highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute." (*White v. Winchester Country Club*, 315 U.S. 32, 41 [62 S.Ct. 425, 86 L.Ed. 619]; *Fawcus Machine Co. v. United States*, 282 U.S. 375, 378 [51 S.Ct. 144, 75 L.Ed. 397]; *Riley v. Thompson*, 193 Cal. 773, 778 [227 P. 772]; *County of Los Angeles v. Frisbie*, 19 Cal.2d 634, 643 [122 P.2d 526]; *County of Los Angeles v. Superior Court*, 17 Cal.2d 707, 712 [112 P.2d 10]; see, Griswold, *A Summary of the Regulations Problem*, 54 Harv.L.Rev. 398, 405; 27 Cal.L.Rev. 578; 23 Cal.Jur. 776.) When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation. (*Helvering v. Griffiths*, 318 U.S. 371, 403 [63 S.Ct. 636, 87 L.Ed. 843]; *United States v. Hill*, 120 U.S. 169, 182 [7 S.Ct. 510, 30 L.Ed. 627]; see *County of Los Angeles v. Superior Court*, 17 Cal.2d 707, 712 [112 P.2d 10]; *Hoyt v. Board of Civil Service Commissioners*, 21 Cal.2d 399, 402 [132 P.2d 804].) Whatever the force of administrative construction, however, final responsibility for the interpretation of the law rests with the courts. "At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed. ... While we are of course bound to weigh seriously such rulings, they are never conclusive." (*F. W. Woolworth Co. v. United States*, 91 F.2d 973, 976.) (2) An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment. (*California Drive-In Restaurant Assn. v. Clark*, 22 Cal.2d 287, 294 [140 P.2d 657, 147 A.L.R. 1028]; *Bodinson Mfg. Co. v. California Employment Com.*, 17 Cal.2d 321, 326 [109 P.2d 935]; *Boone v. Kingsbury*, 206 Cal. 148, 161 [273 P. 797]; *Bank of Italy v. Johnson*, 200 Cal. 1, 21 [251 P. 784]; *Hodge v. McCall*, 185 Cal. 330, 334 [197 P. 86]; *Manhattan General Equipment Co. v. Commissioner of Int. Rev.*, 297 U.S. 129 [56 S.Ct. 397, 80 L.Ed. 528]; *Montgomery v. Board of Administration*, 34 Cal.App.2d 514, 521 [93 P.2d 1046, 94 A.L.R. 610].) (3) Moreover, an erroneous administrative construction does not govern the interpretation of a statute, even though the statute is subsequently reenacted ***758** without change. (*Biddle v. Commissioner of Internal Revenue*, 302 U.S. 573, 582 [58 S.Ct. 379, 82 L.Ed. 431]; *Houghton v. Payne*, 194 U.S. 88 [24 S.Ct. 590, 48 L.Ed. 888]; *Iselin v. United States*, 270 U.S. 245, 251 [46 S.Ct. 248, 70 L.Ed. 566]; *Louisville & N. R. Co. v. United States*, 282 U.S. 740, 757 [51 S.Ct. 297, 75 L.Ed. 672]; *F. W. Woolworth Co. v. United States*, 91 F.2d 973, 976; *Pacific Greyhound Lines v. Johnson*, 54 Cal.App.2d 297, 303 [129 P.2d 32]; see *Helvering v. Wilshire Oil Co.*, 308 U.S. 90, 100 [60 S.Ct. 18, 84 L.Ed. 101]; *Helvering v. Hallock*, 309 U.S. 106, 119 [60 S.Ct. 444, 84 L.Ed. 604, 125 A.L.R. 1368]; *Federal Comm. Com. v. Columbia Broadcasting System*, 311 U.S. 132, 137 [61 S.Ct. 152, 85 L.Ed. 87]; Feller, *Addendum to the Regulations Problem*, 54 Harv.L.Rev. 1311, and articles there cited.)

In the present case Rule 56.1 was first adopted by the commission in 1938. It was amended twice to make minor changes in language, and again in 1942 to extend the maximum period of disqualification to six weeks. The commission's construction of section 56(b) has thus been neither uniform nor of long standing. Moreover, the section is not ambiguous, nor does it fail to indicate the extent of the disqualification. (4) The disqualification imposed upon a claimant who without good cause "has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by the district public employment office" is an absolute disqualification that necessarily extends throughout the period of his unemployment entailed by his refusal to accept suitable employment, and is terminated only by his subsequent employment. (Accord: 5 C.C.H. Unemployment Insurance Service 35,100, par. 1965.04 [N.Y.App.Bd.Dec. 830-39, 5/27/39].) The Unemployment Insurance Act was expressly intended to establish a system of unemployment insurance to provide benefits for "persons unemployed through no fault of their own, and to reduce involuntary unemployment. ..." (Stats. 1939, ch. 564, § 2; Deering's Gen. Laws, 1939 Supp., Act 8780d, § 1.) The public policy of the State as thus declared by the Legislature was intended as a guide to the interpretation and application of the act. (*Ibid.*) (5) One who refuses suitable employment without good cause is not involuntarily unemployed through no fault of his own. He has no claim to benefits either at the time of

his refusal or at any subsequent time until he again brings himself within ***759** the provisions of the statute. (See 1 C.C.H. Unemployment Insurance Service 869, par. 1963.) Section 56(b) in excluding absolutely from benefits those who without good cause have demonstrated an unwillingness to work at suitable employment stands out in contrast to other sections of the act that impose limited disqualifications. Thus, section 56(a) disqualifies a person who leaves his work because of a trade dispute for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed; and other sections at the time in question disqualified for a fixed number of weeks persons discharged for misconduct, persons who left their work voluntarily, and those who made wilful misstatements. (2 Deering's Gen. Laws, 1937, Act 8780(d), § § 56(a), 55, 58(e); see, also, Stats. 1939, ch. 674, § 14; Deering's Gen. Laws, 1939 Supp., Act 8780d, § 58.) Had the Legislature intended the disqualification imposed by section 56(b) to be similarly limited, it would have expressly so provided. (6) Rule 56.1, which attempts to create such a limitation by an administrative ruling, conflicts with the statute and is void. (*Hodge v. McCall, supra;* *Manhattan General Equipment Co. v. Commissioner of Int. Rev.*, 297 U.S. 129, 134 [56 S.Ct. 397, 80 L.Ed. 528]; see *Bodinson Mfg. Co. v. California Employment Com.*, 17 Cal.2d 321, 326 [109 P.2d 935].) Even if the failure to limit the disqualification were an oversight on the part of the Legislature, the commission would have no power to remedy the omission. (7) The power given it to adopt rules and regulations (§ 90) is not a grant of legislative power (see 40 Columb. L. Rev. 252; cf. Deering's Gen. Laws, 1939 Supp., Act 8780(d), § 58(b)) and in promulgating such rules it may not alter or amend the statute or enlarge or impair its scope. (*Hodge v. McCall, supra;* *Bank of Italy v. Johnson*, 200 Cal. 1, 21 [251 P. 784]; *Manhattan General Equipment Co. v. Commissioner of Int. Rev., supra;* *Koshland v. Helvering*, 298 U.S. 441 [56 S.Ct. 767, 80 L.Ed. 1268, 105 A.L.R. 756]; *Iselin v. United States, supra.*) Since the commission was without power to adopt Rule 56.1, it is unnecessary to consider whether, if given such power, the provisions of the rule were reasonable.

The commission contends, however, that petitioners are not entitled to the writ because they have failed to exhaust ***760** their administrative remedies under section 41.1. This contention was decided adversely in *Matson Terminals, Inc. v. California Employment Com., ante,* p. 695 [151 P.2d 202]. It contends further that since all the benefits herein involved have been paid, the only question is whether the charges made to the employers' accounts should be removed, and that since the employers will have the opportunity to protest these charges in other proceedings, they have an adequate remedy and there is therefore no need for the issuance of the writ in the present case. The propriety of the payment of benefits, however, is properly challenged by an employer in proceedings under section 67 and by a petition for a writ of mandamus from the determination of the commission in such proceedings. (See *Matson Terminals, Inc. v. California Employment Com., ante,* p. 695 [151 P.2d 202]; *W. R. Grace & Co. v. California Employment Com., ante,* p. 720 [151 P.2d 215].) An employer's remedy thereunder is distinct from that afforded by section 45.10 and 41.1, and the commission may not deprive him of it by the expedient of paying the benefits before the writ is obtained. (8) The statute itself provides that in certain cases payment shall be made irrespective of a subsequent appeal (§ 67) and such payment does not preclude issuance of the writ. (See *Bodinson Mfg. Co. v. California Emp. Com., supra,* at pp. 330-331; *Matson Terminals, Inc. v. California Emp. Com., supra.*)

Let a peremptory writ of mandamus issue ordering the California Employment Commission to set aside its order granting unemployment insurance benefits to the corespondents, and to refrain from charging petitioners' accounts with any benefits paid pursuant to that award.

Gibson, C. J., Shenk, J., Curtis, J., and Edmonds, J., concurred.

CARTER, J.

I concur in the conclusion reached in the majority opinion for the reason stated in my concurring opinion in *Mark Hopkins, Inc. v. California Emp. Co.,* this day filed, *ante,* p. 752 [151 P.2d 233].

Schauer, J., concurred.

Intervener's petition for a rehearing was denied September 13, 1944. Carter, J., and Schauer, J., voted for a rehearing. ***761**

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